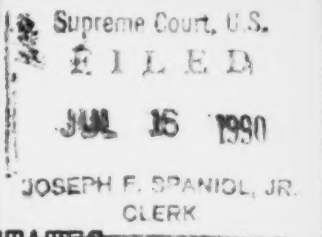


90-105  
No.



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1990

M. WILEY CATLETT,

Petitioner,

v.

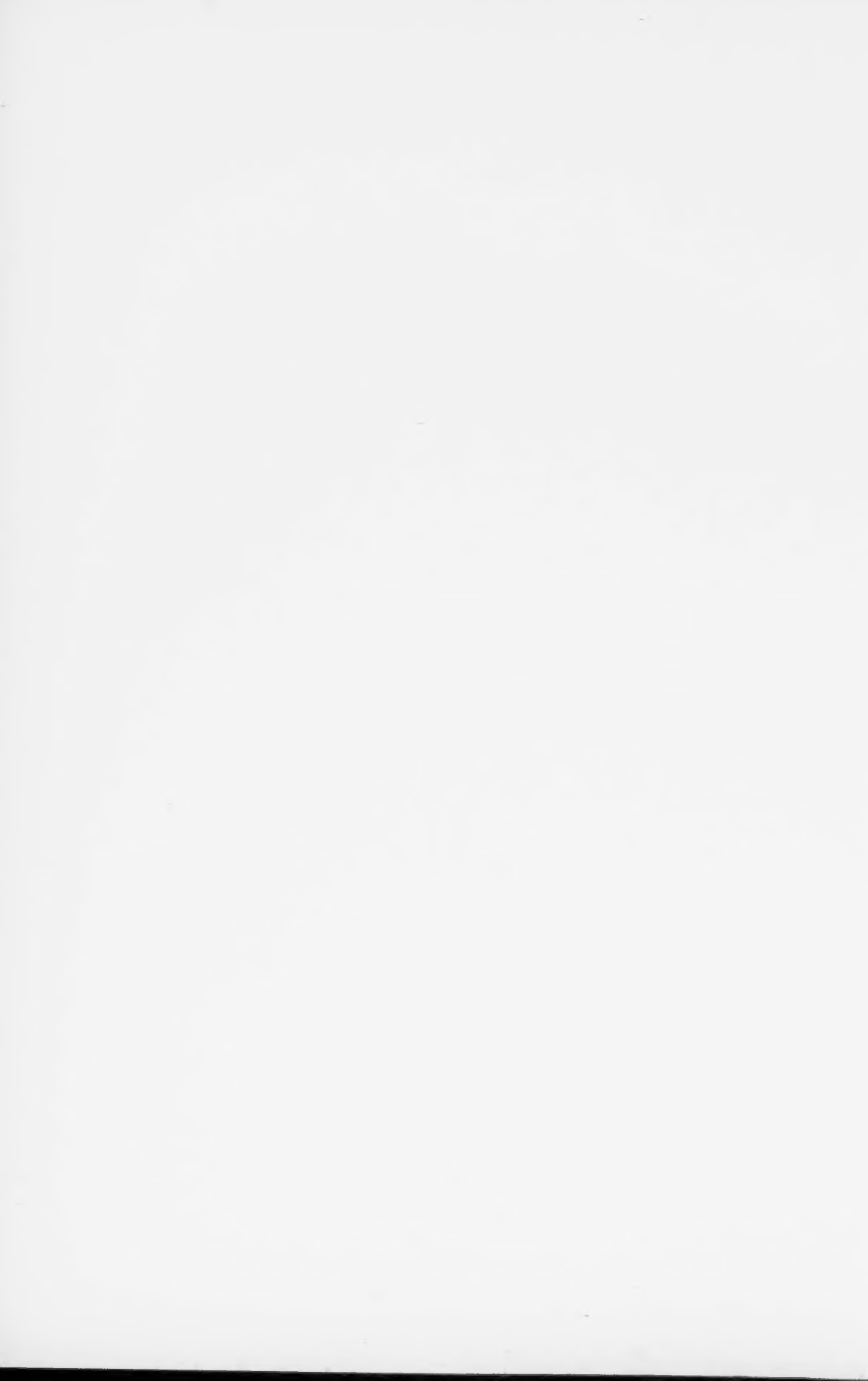
JOHN R. LIVELY,  
JOHNNY W. RICHARDS, II, INDIVIDUALLY,  
AND AS SUCCESSOR ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, WESTERN SURETY COMPANY,  
AUBREY GROUP, Composed of: JOSEPH R.  
KILIANSKI, owner, DAVID J. MCGILVRAY,  
owner, SHAROL L. TOLBERT, owner, L.  
M. TOLBERT, Buyer, FLORENCE IONA  
CATLETT, INDIVIDUALLY, and as INDE-  
PENDENT EXECUTRIX of the ESTATE of P.  
C. CATLETT, DECEASED and as ADMINIS-  
TRATRIX with Will Annexed to the  
ESTATE of CHARLIE CATLETT, DECEASED,  
MADRIN HUFFMAN, AS PROBATE COUNTY  
CLERK OF TARRANT COUNTY, TEXAS, The  
FEDERAL LAND BANK of TEXAS, (TOM J.  
FOUTS, Realtor & Commissioner,  
Filed notice of bankruptcy 6-16-89)

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, Pro Se  
1495 Sunnyside Avenue  
Highland Park, Ill. 60035  
(708) 831-3893



QUESTIONS PRESENTED

I. THE INSTANT CASE IS NOT A "REVIEW" OF ANY FORMER TEXAS STATE COURT CASE BY A FEDERAL DISTRICT COURT AS JUDGE PAUL BROWN MISTAKENLY SUPPOSED. AND COULD NOT BE SINCE ALL OF THE FACTS AND EVENTS CONTAINED IN PETITIONER-PLAINTIFF - M. WILEY CATLETT'S CLAIMS OF WRONG DOING BY DEFENDANT-RESPONDENTS AS SHOWN HEREIN & IN PARS. 70 THRU 100 IN CASE NO. S-87-83-CA, UNITED STATES D. C. FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, ONLY HAPPENED SINCE MARCH 22, 1984 WHEN JOHNNY W. RICHARDS, II BECAME THE SUCCESSOR ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED (M. WILEY CATLETT'S FATHER) BY APPOINTMENT OF JUDGE ROBERT M. BURNETT, PROBATE COURT NUMBER ONE, CAUSE NO. 77-2726, TARRANT COUNTY, TEXAS WITH BOND SET AT ONLY \$8,000.00 ON MARCH 22, 1984; HENCE, JUDGE BROWN AND THEN THE PANEL JUDGES GEE, DAVIS AND JONES OF THE FIFTH CIRCUIT COURT OF APPEALS ERRED IN SO HOLDING,



DIDN'T THEY?

HOWEVER, EVEN ASSUMING ARGUENDO, WHICH PETITIONER - "WILEY" STRONGLY CONTENTS OTHERWISE, THAT THIS CASE COULD ONLY BE "REVIEWED" - WHICH THIS IS NOT SUCH A CASE - BY "THE SUPREME COURT OF THE UNITED STATES" ; IF SO, THEN PETITIONER IS INDEED, NOW IN THE RIGHT COURT, "THE SUPREME COURT OF THE UNITED STATES", ISN'T HE?

II. WHETHER, AS IN THE INSTANT CASE, THERE IS SUBJECT-MATTER JURISDICTION BECAUSE OF A DIVERSITY OF CITIZENSHIPS BETWEEN THE PARTIES AND THE AMOUNT IN CONTROVERSY HAS A SUM OR VALUE IN EXCESS OF \$10,000.00 EXCLUSIVE OF COSTS AND INTEREST, DID THE FEDERAL DISTRICT COURT IN SHERMAN, TEXAS AND THEN THE PANEL JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS ERR, WHEN THE PETITIONER PLAINTIFF AND SOLE HEIR OF ERNEST LUTHER CATLETT, DEC'D. WHOSE FATHER'S ESTATE, CAUSE NO. 77-2726 OF TARRANT COUNTY, TEXAS, BEING ADMINISTERED SINCE MARCH 22, 1984 BY ATTORNEY JOHNNY W.



RICHARDS, II AS THE SUCCESSOR ADMINISTRATOR AND TRUSTEE, DID BREACH HIS TRUST TO THE SOLE HEIR AND BENEFICIARY, M. WILEY CATLETT, WHEN FOR EXAMPLE: "RICHARDS" PAID A FALSE AND MIS-LEADING AND SHAM CLAIM IN THE AMOUNT OF \$41,684.00 ON FEBRUARY 8, 1985 FOR "LIVELY'S" ALLEDGED ATTORNEY'S FEES, EVEN THOUGH SAID ATTORNEY LIVELY'S CLIENT, FLORENCE IONA CATLETT, HAD PREVIOUSLY ON OCTOBER 25, 1982 ALSO FILED A CLAIM FOR "LIVELY'S" ALLEGED ATTORNEY'S FEES IN THE AMOUNT OF \$8,840.00 IN THE SAME COURT AND CAUSE, WHICH WAS REJECTED BY THE ADMINISTRATOR ON NOVEMBER 15, 1982 AND WHICH FIRST ALLEDGED CLAIM FOR "LIVELY'S" ATTORNEY'S FEES WAS NOT SUED ON BY HER IN A TEXAS DISTRICT COURT WITHIN 90 DAYS AS REQUIRED BY TEXAS LAW, V.A.T.S., PROBC., SECTS. 308, 309, 310, 313 THE SAME BEING MANDATORY: THEREFORE, THAT CLAIM IS BARRED FOREVER, HENCE SHOWING THAT "LIVELY(S" SHAM \$42,228.00 CLAIM FILED ON JANUARY 25, 1985 FOR HIS ALLEDGED ATTORNEY'S FEES AGAINST "THIS ESTATE", THE SAME NOT BEING A LEGAL ENTITY IN TEXAS, IS



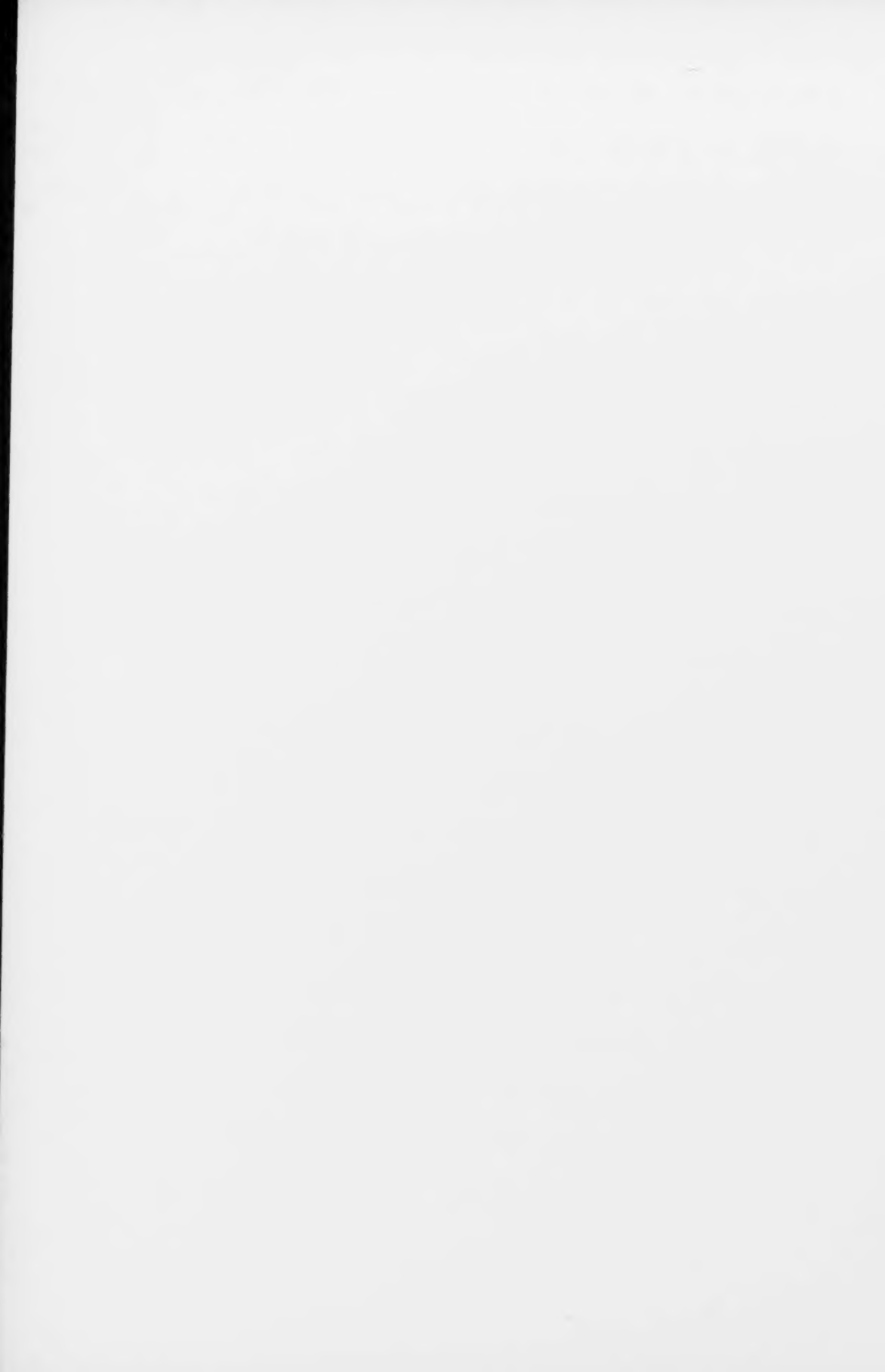
WITHOUT MERIT AND A FRAUD AND WHERE SAID SHAM  
"LIVELY" CLAIM FOR ATTORNEY'S FEES IS NOT  
PROPER UNDER V.A.T.S., Art. 2226, A SUIT FOR  
STATUTORY ATTORNEY'S FEES AS A SEPARATE  
ACTION CANNOT BE MAINTAINED ?

III. WHETHER, AS IN THE INSTANT CASE,  
NONE OF THE RESPONDENTS-DEFENDANTS FILED ANY  
"ANSWERS", AS SUCH, BUT ONLY A "MOTION TO  
DISMISS", AND NONE CONTAINED A "COUNTER-  
CLAIM" DENOMINATED, AS SUCH, AND WHERE THE  
TRIAL COURT IN ITS DISCRETION FILED NO "ORDER"  
COMMANDING THE "PLAINTIFF", "WILEY", TO  
"REPLY": HENCE, UNDER THOSE CONDITIONS, NO  
"REPLY" IS POSSIBLE OR PROPER UNDER RULE, 7(a)  
FED.R.CIV.PROC., WRIGHT AND MILLER, FEDERAL  
PROCEDURE & PRACTICE: CIVIL SECT. 1185, note  
28, p. 17 and note 32, p. 18; "REPLY IMPROPER  
TAYLOR v BLACK, SVALLS & BRYSON, INC. (CA8th  
1951) 189 F2d 213, THEREFORE, WAS THE TRIAL  
JUDGE, PAUL BROWN, SHERMAN DIVISION, U. S.  
DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS IN ERROR IN HIS DISMISSAL OF "WILEY'S"  
COMPLAINT?



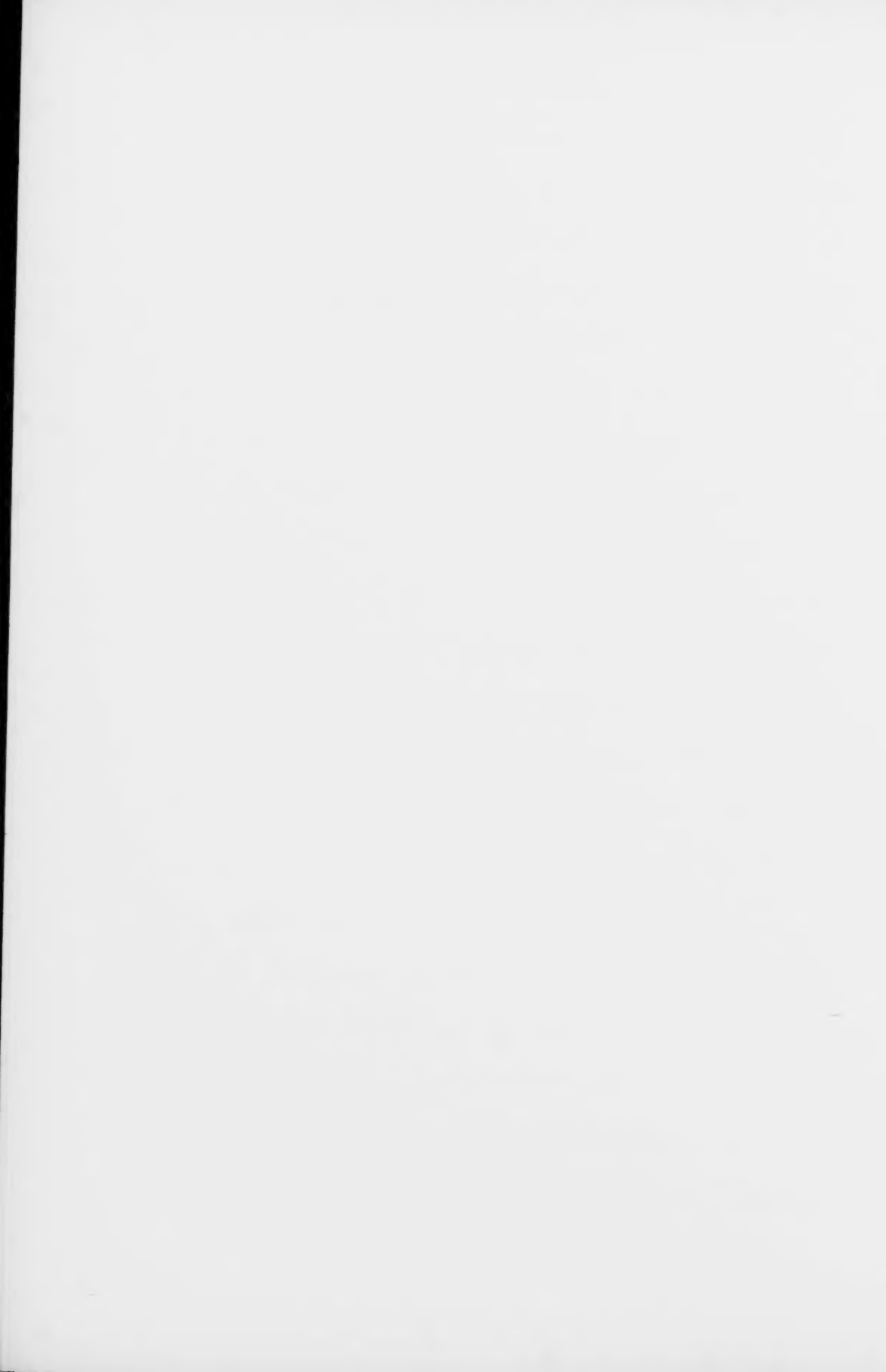
AND WITHOUT ALLOWING HIM ADDITIONAL DISCOVERY TO PROVE THAT HIS COMPLAINT HAS SUBJECT-MATTER JURISDICTION? CORRELATIVELY, DID THE TRIAL JUDGE AND THEN THE PANEL JUDGES OF THE FIFTH CIRCUIT ERR ACCEPTING DEFENDANTS DEFENSES OF LACHES OR STATUTE OF LIMITATIONS UNDER THEIR RULE, "12" F.R.C.P., "MOTION TO DISMISS": WHERE NONE MADE ANY AFFIRMATIVE "ANSWER", AS SUCH, UNDER RULE, 7, F.R.C.P., INSTEAD OF RULE 8(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE, 28 U.S.C.A., FOLLOWING 723c?

IV. WHERE, AS IN THE INSTANT CASE, THERE IS SUBJECT-MATTER JURISDICTION BECAUSE OF A DIVERSITY OF CITIZENSHIPS BETWEEN THE PARTIES AND THE AMOUNT IN CONTROVERSEY HAS A SUM IN EXCESS OF \$10,000.00 EXCLUSIVE OF COSTS AND INTEREST, 28 U.S.C., Sect. 1332(a)(1), DID JUDGE PAUL BROWN OF THE FEDERAL DISTRICT COURT AND THEN THE PANEL JUDGES GEE, DAVIS AND JONES OF THE FIFTH CIRCUIT COURT OF APPEALS, ERR IN THEIR FAILURE TO CONSTRUE THE SECOND

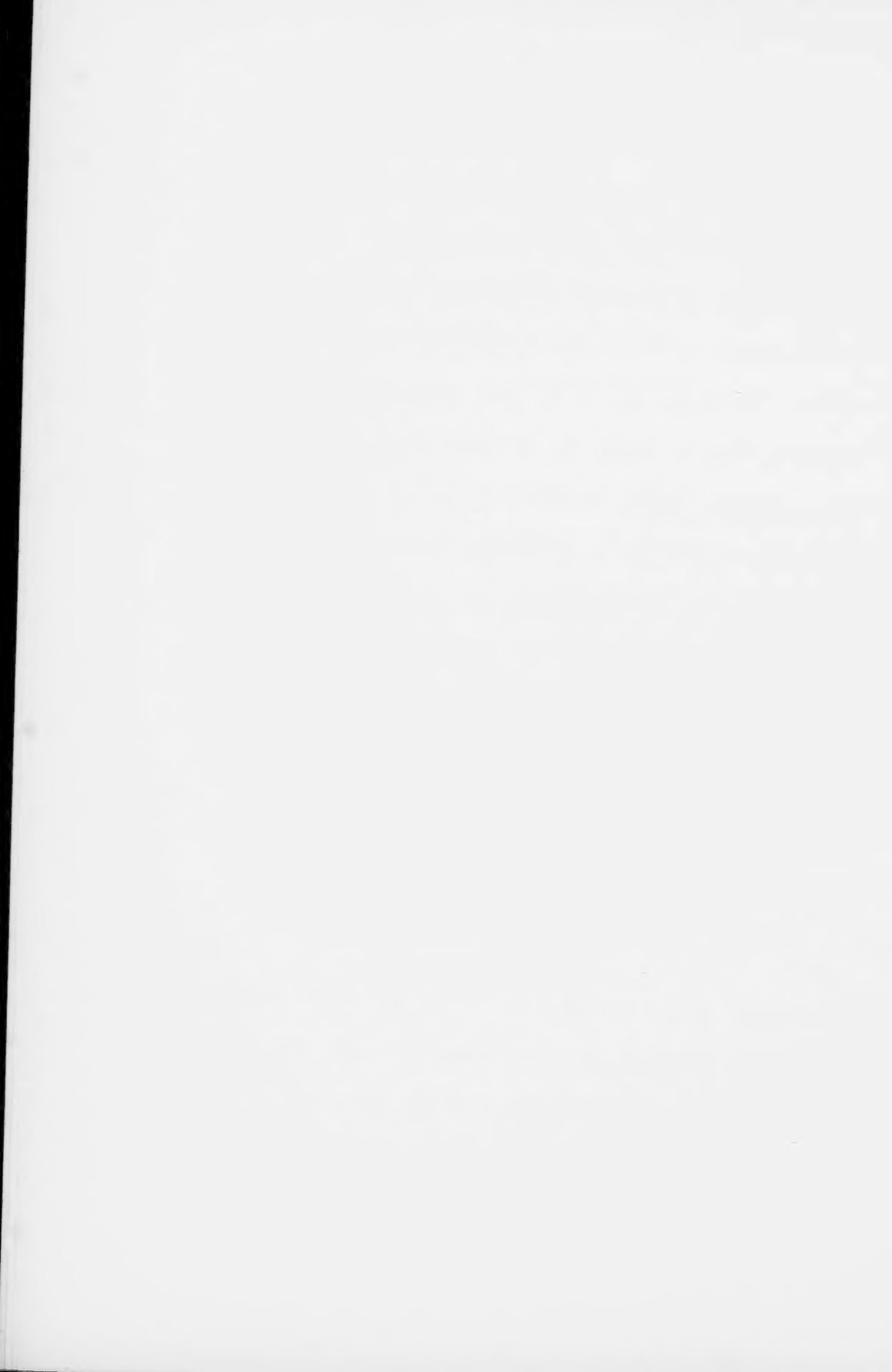


PROVISION OF CHARLIE CATLETT'S (A BROTHER OF ERNEST LUTHER CATLETT AND PHARON C. CATLETT) WILL (EXHIBIT "A" IN THE COMPLAINT OF M. WILEY CATLETT, PETITIONER AND SOLE HEIR OF HIS FATHER, ERNEST LUTHER CATLETT, DECEASED, 1977) AS REQUESTED BY "WILEY" IN HIS COMPLAINT AND HIS OPENING AND HIS REPLY BRIEFS WHERE SAID WILL IS NOT BEING CONTESTED, BUT IS AFFIRMED, SEEKING ONLY A CONSTRUCTION OF THAT SECOND PROVISION WHICH IS NEEDED TO DETERMINE WHETHER "ERNEST" OR HIS BROTHER, "PHARON", WHO PREDECEASED "ERNEST", INHERITED 100% OR JUST WHAT PERCENTAGE OF "WILEY'S" GRANDFATHER'S AND GRANDMOTHER'S @ 225.1 ACRE HOMESTEAD LOCATED NEAR AUBREY, TEXAS?

V. WHETHER, IN THE LAW OF THE CASE - NO. S-87-83-CA, U.S.DISTRICT COURT OF THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION - THERE WAS PLAINTIFF-"WILEY'S" UNACTED ON "MOTION TO COMPEL ANSWERS FROM FLORENCE IONA CATLETT, et al, UNDER RULES, 37(a), 37(d),

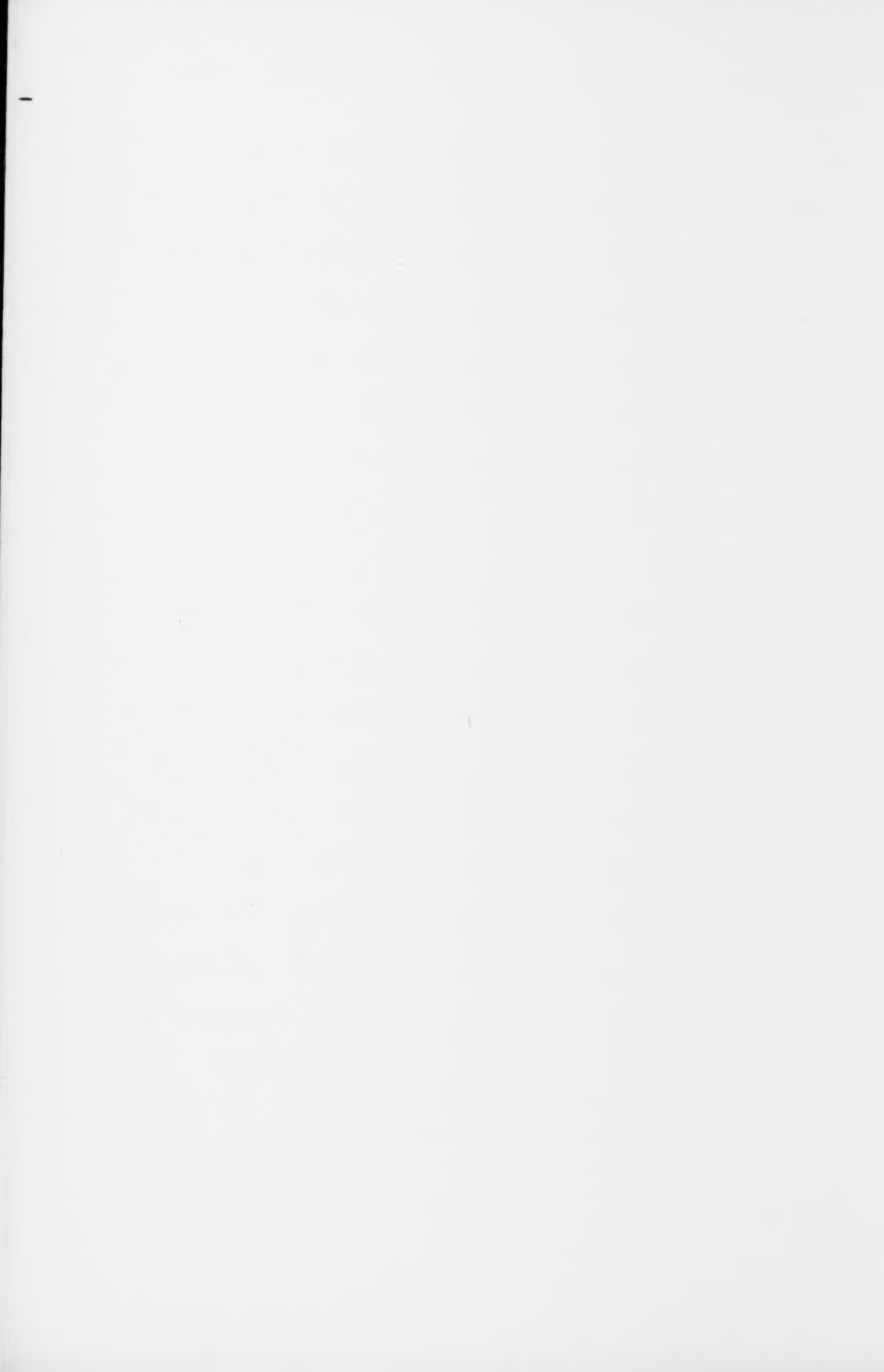


33, and 26"; SAID MOTION BEING FILE MARKED ON AUGUST 21, 1989 BY BEVERLY HUDGENS DEPUTY CLERK OF THE U. S. DISTRICT COURT, HAVING BEEN MAILED FROM DEERFIELD, ILL. 60015 ON AUGUST 18, 1989 PER POSTMARK THEREON, SAID "MOTION TO COMPEL ANSWERS" OF "WILEY'S" WAS STILL PENDING WITHOUT ANY RULING BY JUDGE PAUL BROWN - WHEN HE SIGNED HIS "ORDER" OF AUGUST 22, 1989 (APPENDIX "C", App. 5 & 6); YET JUDGE BROWN - BOTH BEFORE AND AFTER - SAID FILING HIS AUGUST 22, 1989 ORDER HAD SEVERAL OPPORTUNITIES TO CORRECT HIS MISTAKE, PLAINTIFF'S MOTION TO "SET-ASIDE" JUDGMENT, FED.R.CIV.P., RULE 59, AS DID THE PANEL JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS THEY CAN'T JUST IGNORE SAID "MOTION TO COMPEL ANSWERS FROM "FLO", UNDER RULES 37(a), "7(d), 33 and 26", THE TRIAL JUDGE MUST DISPOSE OF SAID PLAINTIFF'S (AUGUST 21, 1989 MOTION) BEFORE HE CAN LEGALLY ACT TO DISMISS PLAINTIFF'S COMPLAINT, AS HE DID, ON AUGUST 22, 1989; THEREFORE, JUDGE BROWN AND JUDGES



GEE, DAVIS AND JONES DID ERR , DID'T THEY?

VI. WHETHER, AS IN THE INSTANT CASE, THERE IS REAL PROPERTY (THE AUBREY, TEXAS FARM OF @ 225.1 ACRES WHICH FORMERLY BELONGED TO PETITIONER - M. WILEY CATLETT'S GRANDFATHER AND GRANDMOTHER, JAMES L. CATLETT AND HIS WIFE, ELIZABETH A. CATLETT) AND WHOSE FATHER'S INTEREST IS UNDER THE CONTROL OF THE JUDGE OF PROBATE COURT, NUMBER ONE, TARRANT COUNTY, TX., CAUSE NO. 77-2726, In Re: THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED; HOWEVER, UNDER TEXAS LAW, V.A.T.S., PROBATE CODE, SECTION 37, IT REALLY BELONGED TO THE SOLE HEIR, M. WILEY CATLETT, WHO IS A CITIZEN OF ILLINOIS AND A NONRESIDENT OF THE STATE OF TEXAS AND WHERE PART OF THAT FARM - SOME ALLEGED 39 ACRES - IS SOLD BY JOHNNY W. RICHARDS II, SUCCESSOR ADMINISTRATOR TO SOME FRIENDS AND CLIENTS OF HIS, THE AUBREY GROUP, MADE UP OF: JOSEPH R. KILIANSKI, owner  
DAVID J. McGILVRAY, owner  
SHARON L. TOLBERT, owner,



ON OCTOBER 19, 1984 AND WITHOUT ANY "NOTICE"  
OR "HEARING" TO THE SOLE HEIR, M. WILEY  
CATLETT, AS REQUESTED IN LETTERS DATED, MAY  
24, 1983 BY THE THEN ATTORNEY OF RECORD,  
WILLIAM L. SMITH, JR. TO THE TARRANT COUNTY  
TEXAS PROBATE CLERK AND TO THE SUCCESSOR ADM-  
INISTRATOR: HENCE, THE HEIR WAS DEPRIVED OF  
HIS PROPERTY WITHOUT ANY NOTICE OR ANY HEAR-  
ING TO EITHER ATTORNEY SMITH OR THE HEIR,  
"WILEY", THEREBY VIOLATING HIS RIGHTS TO  
"DUE PROCESS OF LAW" UNDER THE FIFTH AND  
FOURTEENTH AMENDMENTS OF THE CONSTITUTION  
OF THE UNITED STATES; THEREFORE, JUDGE PAUL  
BROWN, U. S. DISTRICT COURT OF TEXAS AND  
THEN THE PANEL JUDGES GEE, DAVIS AND JONES  
OF THE FIFTH CIRCUIT COURT OF APPEALS ERRED  
IN THEIR HOLDING OTHERWISE, DIDN'T THEY?

VII. WHERE, AS IN THE INSTANT CASE, THERE  
HAS BEEN NO LEGAL PARTITION OF PETITIONER-  
"WILEY'S" GRANDFATHER AND GRANDMOTHER'S @  
225.1 ACRE HOMESTEAD LOCATED NEAR AUBREY,  
TEXAS, FOR THE REASON THAT THE THREE JUDGE



NARSUTIS' JUDGMENTS OF OCTOBER, 1982 IN FLORENCE IONA CATLETT'S PARTITION ACTION, NO. 81-8158-B, DENTON COUNTY, TEXAS WERE REVERSED AND REMANDED WITH COSTS AGAINST "FLO" ON MAY 18, 1983 BY THE OPINION, NO. 2-82-212-CV (#81-8158-B below), OF THE FORT WORTH, TEXAS APPELLATE COURT; THUS BARRING THE NEWLY APPOINTED (MARCH 22, 1984) SUCCESSOR ADMINISTRATOR, JOHNNY W. RICHARDS, II OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED - "WILEY'S" FATHER AND HIS SOLE HEIR - NO. 77-2726, TARRANT COUNTY, TX., FROM SELLING SOME ALLEGED 39 ACRES OF THAT @ 225.1 ACRES AND WHERE SAID LAND WAS REALLY OWNED BY THE HEIR, TO SOME CLIENTS AND FRIENDS OF "RICHARDS" ALLEGEDLY SOLD ON OCTOBER 19, 1984 TO THE AUBREY GROUP FOR \$82,000.00; YET "RICHARDS" DEPOSITING ONLY \$77,560.66 (@ 10-25-84); THEREFORE, DID THE FEDERAL DISTRICT COURT AND THEN THE FIFTH CIRCUIT COURT OF APPEALS ERR IN AFFIRMING SUCH ACTION, ESPECIALLY, WHEN "RICHARDS" PROCEEDED WITH THAT ALLEGED SALE IN VIOLATION- NO LEGAL PARTITION - OF SAID LAND AND NOT IN

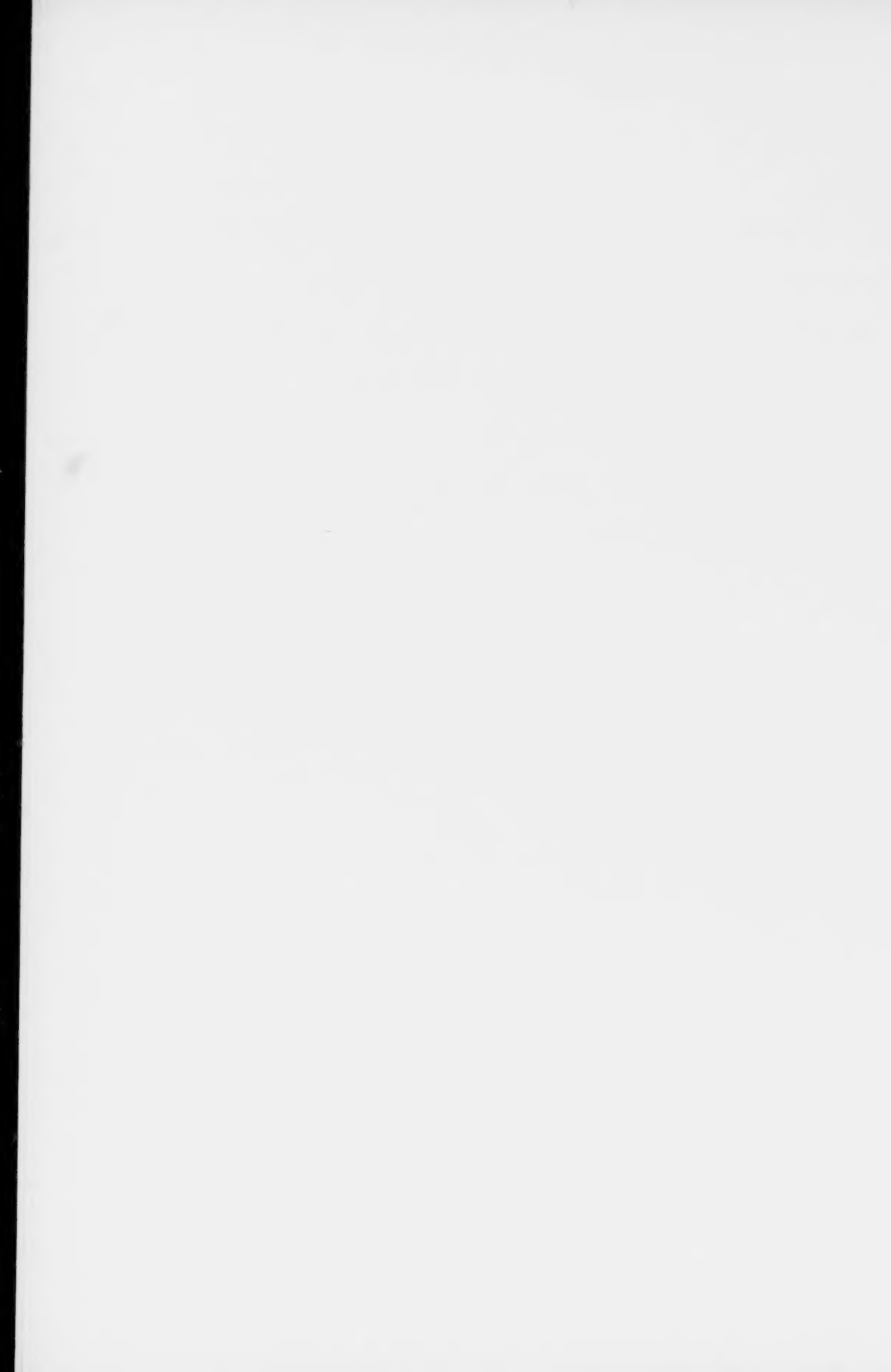


CONFORMITY WITH THE TEXAS PROBATE CODE, SECTIONS 353 (WHERE HE MADE "NO REPORT OF SALE" AS REQUIRED); NOR WAS "RICHARDS" BOND OF \$8,000.00 INCREASED ON THE SALE OF REAL ESTATE FOR \$82,000.00, SECT. 354; NOR DID THE COURT TAKE ANY ACTION ON THE "REPORT OF SALE" AS SECT. 355 REQUIRES; YET, "RICHARDS" PROCEEDED TO SELL SOME ALLEGED 39 ACRES OF THE FARM TO THREE FRIENDS AND CLIENTS OF HIS (THE AUBREY GROUP) AT A PRICE UNDER THE MARKET AT THAT TIME.

VIII. WHETHER, AS IN THE INSTANT CASE, PURSUANT TO F.R.C.P., RULES, 60(b)(3); EXTRINSIC FRAUD; 60(B)(4), VOID JUDGMENTS; 60(b)(5), PRIOR JUDGMENT UPON WHICH IT IS BASED HAS BEEN REVERSED OR OTHERWISE VACATED, DID THE TRIAL JUDGE AND THEN THE PANEL JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS ERR WHEN THEY WERE CONSIDERING THE EFFECT ON LEGAL INSTRUMENTS WHICH DEAL WITH THE SUBJECT MATTER, "WILEY'S" GRANDFATHER AND GRANDMOTHER'S HOMESTEAD OR - ANY PART THERE-



OF - WHERE THE LEGAL DESCRIPTIONS THEREIN AS  
REQUIRED BY THE TEXAS STATUTE OF FRAUDS IS  
INSUFFICIENT IN ITS DESCRIPTION OR WHERE  
THE SAME IS MISSING IN SAID DOCUMENT WHICH  
DEALS WITH THE SALE OR CONVEYANCE OF LAND;  
THEREBY, RENDERING SAID DOCUMENT, JUDGMENT  
OR ORDER, TO BE NULL AND VOID?



## TABLE OF AUTHORITIES

### U. S. CONSTITUTION:

|                                  |                    |
|----------------------------------|--------------------|
| U. S. Const., Art. III, Sect. 2  | 5                  |
| U. S. Const., Amend. V. and XIV. | 20, 21, 31, 45, 46 |

### FEDERAL STATUTES:

|                             |       |
|-----------------------------|-------|
| 28 J.S.C., Sect. 1254(1)    | 5     |
| 28 U.S.C., Sect. 1331       | 3, 46 |
| 28 U.S.C., Sect. 1332(a)(1) | v, 4  |

### FEDERAL RULES OF CIVIL PROCEDURE:

|                |                |
|----------------|----------------|
| Rule, 5        | 45             |
| Rule, 7        | v, 35          |
| Rule, 7(a)     | iv, vi, 35, 36 |
| Rule, 8(c)     | v, 36          |
| Rule, 10(c)    | 38, 56         |
| Rule, 12       | v, 36          |
| Rule, 12(b)    | 36             |
| Rule, 12(b)(6) | 37             |
| Rule, 26       | vii, 1, 40     |



|                |             |
|----------------|-------------|
| Rule, 33       | vii, 40     |
| Rule, 34       | 1           |
| Rule, 37       | 1           |
| Rule, 37(a)    | vi, vii, 40 |
| Rule, 37(d)    | vi, vii, 40 |
| Rule, 55(b)(2) | 45          |
| Rule, 59       | vii         |
| Rule, 60(b)(3) | xi          |
| Rule, 60(B)(4) | xi          |
| Rule, 60(b)(5) | xi, 49      |

|   |        |
|---|--------|
| C. WRIGHT & A. MILLER, Federal Practice<br>& Procedure, Civil, Sect. 1185<br>note 28, p.17, note 32, p.18 | iv, 35 |
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|--|----|
| 2A MOORE'S Federal Practice, 2d Ed.<br>Par. 7.05 | 36 |
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| 2A MOORE'S Federal Practice, 2d Ed.<br>Par. 12.07, p12.50(1985) | 46 |
|---|----|

#### TEXAS CONSTITUTION:

|   |    |
|---|----|
| TEX. Const., Art. V., Sect. 8           | 47 |
| TEX. Const., Art. V., Sect. 16          | 47 |
| TEX. Const., RS of TEX. 1925, Art. 4004 | 60 |
| TEX. Const., RS of TEX. 1925, Art. 6083 | 60 |



|   |    |
|---|----|
| TEX. Const., RS of TEX., 1925, Art. 1982        | 48 |
| TEX. Const., RS of TEX., 1925, Art. 2226.       | 29 |
| 19 TEXAS JUR. 2d - DEEDS -<br>Sect., 123, p.423 | 57 |
| 25 TEXAS JUR. 2d - FRAUD & DECEIT<br>Sect., 38  | 59 |

#### TEXAS STATUTES:

|  |         |
|--|---------|
| V.A.T.S., Probate Code, Sect. 33(j)                | 20      |
| V.A.T.S., Probate Code, Sect. 37<br>44, 46, 49, 59 |         |
| V.A.T.S., Probate Code, Sect. 308                  | 111, 30 |
| V.A.T.S., Probate Code, Sect. 309                  | 111, 30 |
| V.A.T.S., Probate Code, Sect. 310                  | 111, 30 |
| V.A.T.S., Probate Code, Sect. 313                  | 111, 30 |
| V.A.T.S., Probate Code, Sect. 26.01                | 55      |
| V.A.T.S., Probate Code, Sect. 3(r)                 | 43      |

#### CASES:

|   |    |
|---|----|
| Adams v. Epstein (Tex.Civ.App. - Waco<br>1934) 77 S.W.2d 545 at p.546 | 41 |
| Adams v. Maris (Comm'n.Tex.1929)<br>213 S.W.2d 622                    | 29 |



|   |               |
|---|---------------|
| Bates v. Southgate, 308 Mass, 170, 31<br>N.W. 2d 551, 556, 133 A.L.R. 1349,<br>quoted with approval by TEX.SUP.CT.<br>in Dallas Farm Machinery Co. v.<br>Reaves(150 TEX. 1),307 S.W.2d 233<br>242 | 48            |
| Bell v Hood (1946) 327 US 678, 686 at<br>682, 66 S.Ct. 773, 776, 90 L.Ed. 939<br>at p. 943  | 46            |
| Boyd v. Gillman (Tex.Civ.App.1969)<br>447 S.W.2d 759 at 763   | 41            |
| Brooker v. Brooker, 130 Tex. 27, 106<br>S.W.2d 247, 253 (1937)  | 29            |
| Brooks v. Mahous (1977) T.C.A., 554<br>S.W.2d 292 at 293, n.w.h.  | 28            |
| Browning v. West (1977 - T.C.A.) 557<br>S.W.2d 848 at 851, ref.n.r.e.   | 56            |
| Brunson v. Brunson (1963 CA7thDist.)<br>372 S.W.2d 761,writ Dism.w.o.j.   | 43            |
| Bruger v. Young, 78 TEX. 658, 15 S.W.107  | 55            |
| Burnaman v. Heaton, (1951) 150 TEX. 333,<br>240 S.W.2d 288 at 291   | 59            |
| Byers v. McAuley, 149 US 608, 37 L.Ed.<br>867, 13 S.Ct. 906   | 62            |
| Catlett, Adm'r. v. Catlett (FLO) (May 18,<br>1983 - Tex.Civ.App.,Ft.Worth- Un-<br>published OPINION) No. 2-82-212-CV<br>(No. 81-8158-B below),APPENDIX "P",<br>App. 50 thru 56                    | 2, 10, 51, 52 |
| Camella Diced Cream Co. v. Chance<br>(CA 1966) 339 S.W.2d 558   | 28            |



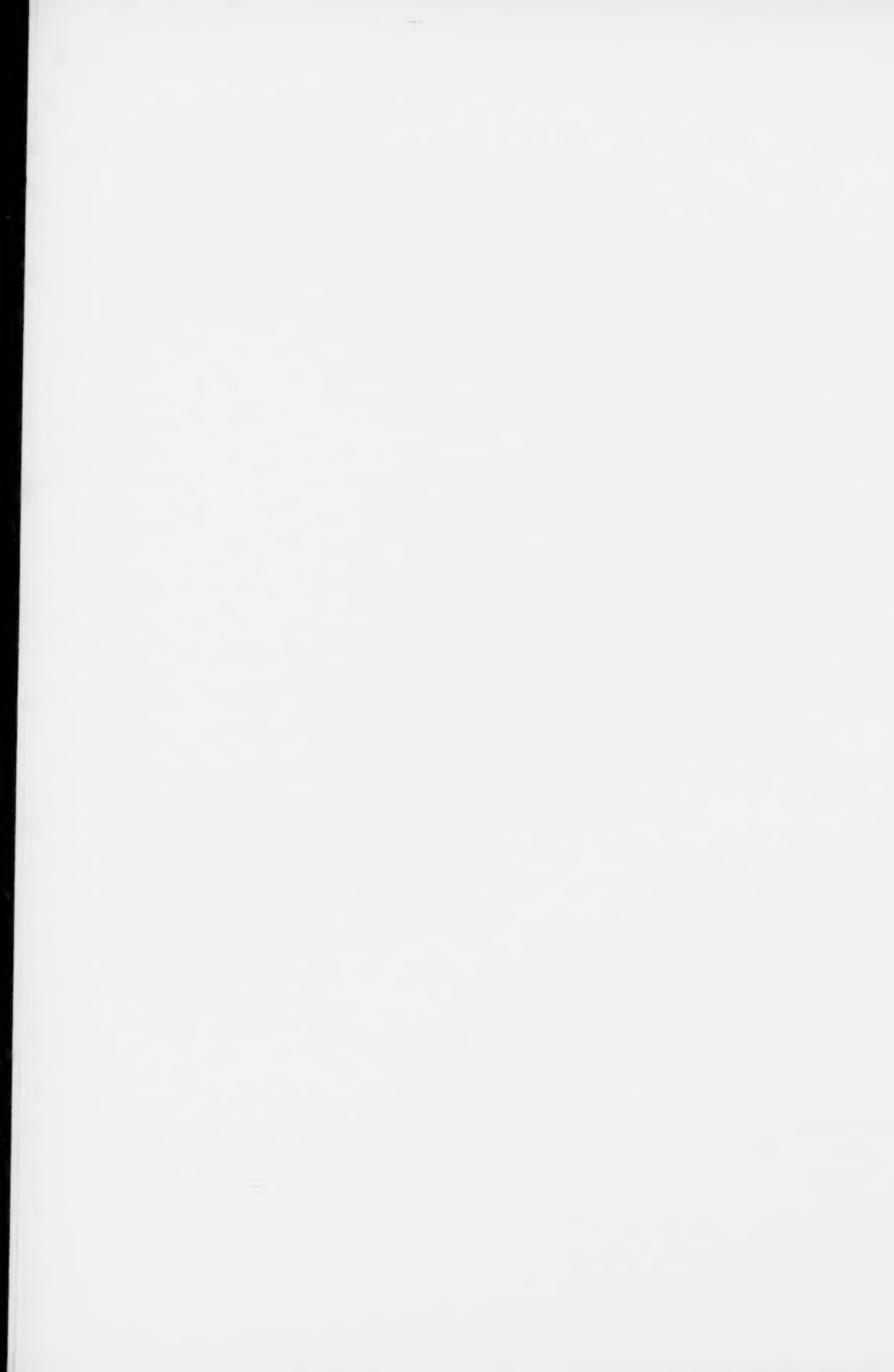
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| Cartwright v. Minton (1959 - T.C.A.)<br>318 S.W.2d 449 at 454 RNRE  | 43     |
| Chilvis v. Securities & Exchange Comm.<br>(1970 ND Ga) 28 FR Serv.2d 1065                                   | 36     |
| Conley v. Gibson (1957) 355 US 41, 2 L.<br>Ed.2d 80, 78 S.Ct. 99 at 84                                      | 36, 37 |
| Comet Aluminum Company v. Judge<br>Dirbel, (1979, TEX.SUP.CT.) 450 S.W.<br>2d 56 at 59                      | 56     |
| Cox v. Hart, 145 US 376, 36 L.Ed. 741,<br>12 S.Ct. 962  | 57     |
| Cottingham v. Hall (CA4th - 1932) 55<br>F2d 664 at 665  | 61     |
| Doing v. Riley (CA5th - 1949) 176<br>F2d 449 at 457   | 12     |
| Eddy v. Eddy (CA6th - 1903) 168 F 590,<br>cert.denied, s214 US 518, s53 L.Ed.<br>1065, s29 S.Ct. 699 at 601 | 25     |
| Edwards v. Gifford, 137 TEX. 559, 155<br>S.W.2d 786 (1941) at 569   | 59     |
| Ex parte Mabry, 122 TEX. 54, 52 S.W.<br>2d 73, 74   | 42     |
| Ex parte Mason (1979 -T.C.A.) 584<br>S.W.2d 936 at 937  | 42     |
| Evons v. Winkler (1965 - T.C.A.) 388<br>S.W.2d 265 RNRE, at 268-9   | 55     |
| Farley v. Dorsey, TEX.SUP.CT., 135<br>S.W.2d 89 at 90   | 47     |
| Frost Nat. Bank of San Antonio v.<br>Newton (1977 - TEX.SUP.CT.) 554<br>S.W.2d 149 at 153                   | 27     |



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| Freeman v. Freeman, 160 TEX. 148, 327<br>S.W.2d 428 at 431   | 55     |
| Fuentes v. Shevin (1972) 407 US 67, 32<br>L.Ed.2d 556, 583, 92 S.Ct. 1983 reh<br>den. 409 US 902, 32 L.Ed.2d 165, 93<br>S.Ct. 177 at 80-569 & 81-580 | 46     |
| Garrett v. First Nat. Bank & T. Co.<br>(CA5th 1946) 153 F2d 289 at 290<br>& 291  | 61     |
| Green v. Creighton (Kendall v. Creigh-<br>ton) 23 How. 90, 16 L.Ed. 419  | 62     |
| Greer v. Greer (1946) 144 TEX. 528, 191<br>S.W.2d 848 at 849-850   | 57     |
| Hall v. Cottingham (1931 - Dist.Ct.E.D.<br>South Carolina) 55 F2d 659 at 660-1   | 61     |
| Hatton v. Burgess, 1943, 167 S.W.2d<br>260, w.w.m., T.C.A.   | 57     |
| Harris v. Shafer (1893) 86 TEX. 314,<br>23 S.W. 979 at 980   | 53     |
| Hayes v. Pratt, 147 US 557, 570 L.Ed.<br>270, 284, 13 Sup.Ct.Rep. 503  | 62     |
| Hishon v. King & Spalding (1984) 103<br>S.Ct. 2229 at 2232   | 37, 46 |
| Holmberg v. Hannaford (1939-D.C.Ohio)<br>26 F.Supp. 216  | 36     |
| Huffman v. Huffman, 161 TEX. 267, 339<br>S.W.2d 885 (1960)   | 27     |
| Hyde v. Stone, 20 How. 170, 175, 15 L.<br>Ed. 874, 875   | 62     |
| Ingersoll v. Coram, 211 US 335, 53 L.<br>Ed. 208, 29 Sup.Ct.Rep. 92  | 62     |



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| Johnson v. Colt (CA) 48 S.W.2d 397   | 51     |
| Jenkins v. McKeithen (1969) 395 US 411,<br>89 S.Ct. 1843, 23 L.Ed.2d 404 at<br>416-417                                 | 36     |
| Jones v. Miller (D.C.W.D.Penn 1942)<br>2 F.R.D. 479  | 36     |
| Jon-T Farms, Inc. v. Goodpasture, Inc.<br>(CA 1977) 554 S.W.2d 743, RNRE, at<br>752 (17-18)                            | 29     |
| Kansas-Nebraska Natural Gas Co. v.<br>Village of Deshler, Neb. (U.S.<br>Dist.Ct.D.Nebr.1960) 192 F.Wupp.<br>303 at 311 | 35     |
| Ken-Mar Airpack, Inc. v. Toth Aircraft<br>& Accessories Co. 12 F.R.D. 399<br>(W.D.Mo. 1952)                            | 45     |
| Kingston v. Pickings, 47 TEX. 99 at 101  | 57     |
| Kittredge v. Race (1875) 92 US 116, 23<br>L.Ed. 488, 490   | 43     |
| Lippman, Inc. v. Hewitt-Robins, Inc.<br>(1977) E.D.Wis. 55 F.R.D. 439, 16<br>FR Serv.2d 199                            | 36     |
| Lowman v. Falsetti (CA5th 1964) 335 F2d<br>632, cert.denied 85 S.Ct. 659, 379 US<br>966, 13 L.Ed.2d 560 at 638         | 47, 48 |
| Lum v. Lacy (1981 - T.C.A.) 616 S.W.2d<br>260,n.w.h. at 261  | 55     |
| Markham v. Allen (1945) 326 US 490, 496,<br>90 L.Ed. 256, 261, 66 S.Ct. 296 at<br>259                                  | 41, 62 |
| Mullane v. Central Hanover B. & T. Co.<br>(1950) 339 US 306-321, 94 L.Ed.865,<br>70 S.Ct. 652 at 872 or 312            | 31, 44 |



|  |    |
|--|----|
| National Audbon Society v. Marshall<br>(CA5th - 1970 Ga) 424 F2d 717                                     | 39 |
| National Homes Corp. v. C. U. Builders<br>, Inc. (CA 1965) 393 S.W.2d 949 err.<br>dismd.                 | 29 |
| Neblett v. Butler (1942 .T.C.A.) 162<br>S.W.2d 458, writ ref.w.o.m.                                      | 28 |
| Payne v. Hook (1868) 7 Wall 425, 74 US<br>425, 19 L.E. 260 at 261-262<br>5, 32, 33, 34, 62               |    |
| Pemberton v. Leatherwood (Tex.Civ.App.)<br>219 S.W.2d 490, reh.den.err.ref.                              | 51 |
| Pennoyer v. Neff (1877) 95 US 714, 24<br>L.Ec. 565 at 573  | 31 |
| Prince v. Peurifoy (T.C.A.) 396 S.W.2d<br>913 at 916   | 55 |
| Price v. Estate of Anderson (1975 TEX)<br>552 S.W.2d 690 at 691  | 28 |
| Republic National Bank of Dallas v.<br>Fredericks (TEX.SUP.CT. - 1955) 283<br>S.W.2d 39, 49, 155 TEX. 79 | 27 |
| Russell & Allen v. Dobbs (TEX. 1962)<br>163 TEX. 282, 354 S.W.2d 373 at 286                              | 30 |
| Erie R. Co. v. Tompkins, 304 US 64<br>(1938)   | 53 |
| Scott v. McNeal, 1893, 154 US 34, 14<br>S.Ct. 1108, 1112, 38 L.Ed. 896<br>at 901                         | 45 |
| Sniadach v. Family Finance Corp., 395<br>US 337, 89 S.Ct. 1820, 23 L.Ed.<br>2d 349 (1949)                | 44 |



|   |            |
|---|------------|
| Sonus Corp. v. Matsushita Electrical Co.<br>(1974 D.C.Mass) 61 F.R.D. 644, 18 FR<br>Serv. 2d 354 at 648 & 649   | 44, 45     |
| Strates v. Dimotsis (CA5th 1940) 110<br>F2d 374, 376, cert.denied s311 US<br>666, s65 L.Ed. 427, s61 S.Ct.24  | 14, 26     |
| Suydam v. Broadnax, 14 Pet. 67, 10<br>L.E. 357  | 62         |
| Traylor v. Black, Sivalis & Bryson, Inc.<br>(CA8th - 1951) 189 F2d 213  | 35         |
| Thompson v. Bracken (T.C.A.Dallas 1936)<br>93 S.W.3d 614, writ.ref.n.f.e.at 616   | 57         |
| Tulsa Profession Collection Services,<br>Inc. v. Pope (1988) 485 US _____,<br>99 L.Ed.2d 565, 108 S.Ct. 1340  | 31         |
| Vredenburg v. Bachman (CA5th-1926)<br>11 F2d 473  | 60         |
| Waterman v. Canal-Louisiana Bank & Trust<br>Co., 215 US 33, 30 S.Ct. 10, 12, 54<br>L.Ed. 80 at 84 or 43   | 34, 41, 62 |
| White v. Hidalgo County Water Improve-<br>ment Dist.No.2(Tex.Civ.App.-1928)<br>6 S.W.2d 790 at 791  | 57         |
| Williamson v. Tucker, (CA5 - 1981) 645<br>F2d 404 at 415, cert.denied(1981)454<br>US 897, 102 S.Ct. 396, 70 L.Ed.2d 212;<br>Petition for Rehearing and Petition<br>for Suggesting Rehearing en banc | 47, 61     |
| Zahn v. Nat'l. Bank of Commerce (1959<br>-CA5thDist.) 328 S.W.2d 783 writ RnRE  | 43         |
| Zaidi v. Ehrlich (CA5 - 1984) 732 F2d<br>1218   | 36         |

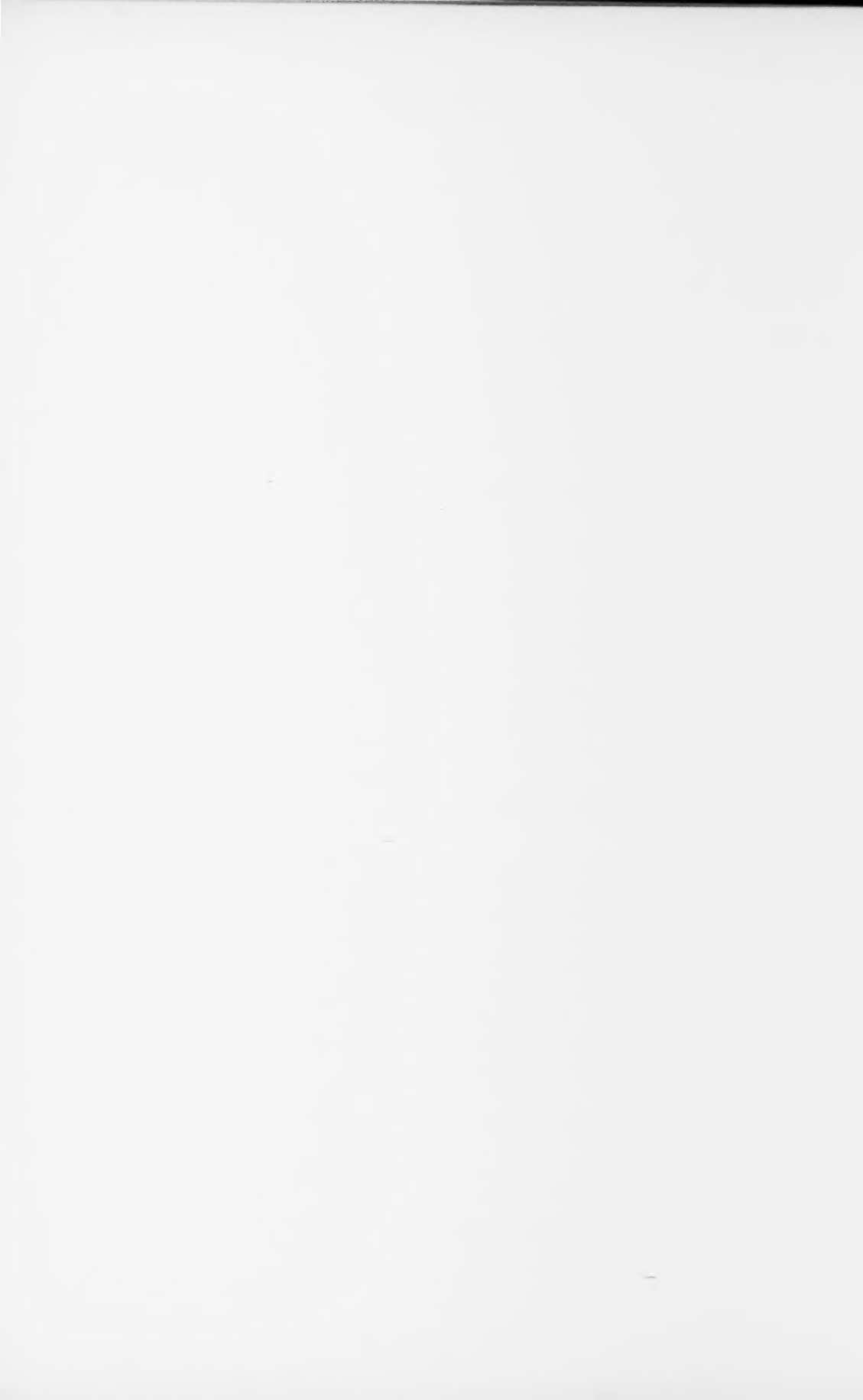


## TABLE OF CONTENTS

|                                     | <u>Page</u> |
|-------------------------------------|-------------|
| Questions Presented . . . . .       | 1           |
| Parties Below . . . . .             | Cover       |
| Table of Authorities . . . . .      | xiii        |
| Table of Contents . . . . .         | xxii        |
| Opinions Below . . . . .            | 1           |
| Statement of Jurisdiction . . . . . | 2           |
| Statement of Case . . . . .         | 5           |
| "Wiley's" Claim No. 1 . . . . .     | 7           |
| "Wiley's" Claim No. 2 . . . . .     | 14          |
| "Wiley's" Claim No. 3 . . . . .     | 16          |
| "Wiley's" Claim No. 4 . . . . .     | 17          |
| "Wiley's" Claim No. 5 . . . . .     | 19          |
| "Wiley's" Claim No. 6 . . . . .     | 20          |
| "Wiley's" Claim No. 7 . . . . .     | 20          |

### ARGUMENTS on QUESTIONS:

|                                     |                             |    |
|-------------------------------------|-----------------------------|----|
| No. I                               | New Fed. Claim or "REVIEW"? | 24 |
| No. II                              | "Richards" & "Lively's"     |    |
|                                     | Fraud & Waste, etc          | 26 |
| No. III                             | Rule, 7(a), F.R.C.P.        | 35 |
| No. IV                              | Construction of Will        | 38 |
| No. V                               | Motion Ignored by J. Brown  | 39 |
| No. VI                              | Due Process of Law          | 42 |
| No. VII                             | "Flo's" Partition Action    | 49 |
| No. VIII                            | Void Judgments              | 53 |
| Reasons for Granting Writ . . . . . |                             | 61 |
| Conclusion . . . . .                |                             | 63 |
| Appendix is in a separate Volume    |                             |    |



OPINIONS BELOW

The 4-26-90 OPINION of the FIFTH CIRCUIT COURT of APPEALS denying a petition for rehearing, APPENDIX "E", App. 8 & 9. The 4-3-90 ORDER of the FIFTH CIRCUIT denying further extension of time for filing a petition for rehearing from & including 4-11-90, APPENDIX "E.1", App. 9.1 & 9.2. The 3-14-90 OPINION of the FIFTH CIRCUIT AFFIRMING the judgment of the U.S.District Ct. for the Eastern Dist. of Tx., Sherman Div., APPENDIX "D", App. 6, The 8-22-89 ORDER of the U.S. Dist. Ct. for the Eastern Dist. Ct. of Tx., Sherman Div. denying plaintiff's motion to "Set Aside", motion to enlarge time, etc., and motion for Sanctions Under Rules, 37, 34, and 26, APPENDIX "C", App. 5 & 6.

The 4-18-89 MEMORANDUM OPINION, dismissing plaintiff's claims for lack of subject matter jurisdiction, APPENDIX "B", App. 2 thru 4. The 4-18-89 ORDER of the U.S.Dist.Ct., for the Eastern Dist. of Texas, Sherman Div.,



dismissing plaintiff's claims for lack of subject matter jurisdiction, APPENDIX "A", App. 1. None of the above orders or opinions is reported; however, they are reproduced in the APPENDIX which is a separate volume.

The 5-14-81 "ORDER CONFIRMING SETTLEMENT", Probate Court No. 1, Tarrant County, Texas, No. 77-2726, APPENDIX "L", App. 26 thru 28. The 9-15-81 AGREED JUDGMENT, No. 236-39718-76, Tarrant County, Texas (Vol 1, p.239-245). The 5-18-83, OPINION (unpublished) - 2nd Supreme Judicial District. Court, Fort Worth, Tx., No. 2-82-212-CV (No. 81-8158-B below) Court of Appeals, APPENDIX "P", App. 50 thru 56. The 2-8-85 "ORDER AUTHORIZING PAYMENT OF CLAIM", Probate Court No. 1, Tarrant County, Tx., No. 77-2726, In Re: The Estate of Ernest Luther Catlett, Deceased, APPENDIX "W", App. 80 & 81.

STATEMENT OF JURISDICTION



This action (S-87-83-CA) is a civil suit with the jurisdiction of the United States Court for the Eastern District of Texas, Sherman Division having original jurisdiction under 28 U.S.C., Sect. 1331. In that, the Texas land owned by the Illinois heir, being under the control of Johnny W. Richards, II, Successor Administrator of the heir's father's estate (hereinafter "Ernest's Estate") - Cause No. 77-2726, Tarrant County, Tx., In Re: The Estate of Ernest Luther Catlett, Dec'd. On October 19, 1984, "Richards" purportedly sold some alleged 39 acres, a part of "Wiley's" grandfather's and grandmother's @ 225.1 acre homestead, known herein as the "AUBREY, TEXAS FARM" to some friends and clients of his (THE AUBREY GROUP) without any notice or any hearing to the sole heir, "Wiley", who had requested same in letters dated May 24, 1983 to the Probate Clerk of Tarrant County, Texas and to the



"Successor Administrix" through his attorney of record, William L. Smith, Jr., (Exhibit "G" in Complaint). Which actions or failure to act, deprived the Illinois heir, a non-resident of the State of Texas of his property; thereby violating his rights to due process of law ( APPENDIX "X", App. 82) under the 5th and 14th Amendments of the Constitution of the United States.

The U. S. District Court's jurisdiction was also founded on diversity of citizenships of the parties, Petitioner is a citizen of Illinois and the Respondents are citizens of the state of Texas, except the Western Surety Company, which company is deemed to be a citizen of South Dakota doing business in the State of Texas. The Federal Land Bank of Texas (formerly, that is, before 1979, The Federal Land Bank of Houston) is a bank doing business in the State of Texas and deemed to be a citizen of the State of Texas. 28 U.S.C. Sect. 1332(a)(1):



The amount in controversy exceeds the sum or value of \$10,000.00. exclusive of interest & costs, and is between citizens of different states.

74 PAYNE v. HOOK, Supreme Court of the United States, 1868, 7 Wall 425, 19 L.Ed. 260, US 425, "The judicial power of the United States shall extend \* \* \* \* \* to controversies between citizens of different states. "Art.III,Const.,Sec.2. (APPENDIX "X", App. 82)

Further, on March 14, 1990 the FIFTH CIRCUIT COURT of APPEALS affirmed the April 18, 1989 ORDER and the AUGUST 22, 1989 ORDER of the U.S.District Court of the Eastern District of Texas, Sherman Div. A petition for rehearing and suggestion for rehearing en banc was denied on April 26, 1990. This Court's (The Supreme Court of the United States) jurisdiction is invoked under 28 U.S.C., Sects. 1254(1)

#### STATEMENT OF CASE

The claims, as will be spelled out later, are all new, contrary to Respondents-Defendants, they have not been litigated before



in any Texas State Court.

Petitioner "Wiley" filed his complaint (S-87-83-CA) on 4-16-87 in the United States District Court for the Eastern District of Texas, Sherman Division against Johnny W. Richards, II, Individually and in his fiduciary capacity, as the Successor Administrator of the Estate of Ernest Luther Catlett, Deceased ("Wiley's" father); therefore, he was trustee of the beneficiary and sole heir, "Wiley", and against his surety, Western Surety Company and others as mentioned in the caption herein. "Richards" is friend and the attorney of record for the AUBREY GROUP:

Composed of: Joseph R. Kilianski, owner  
David J. McGilvray, owner  
Sharon L. Tolbert, owner, and

against the buyer, L. M. Tolbert. "Richards" was appointed on March 22, 1984 by Judge Robert M. Burnett, Probate Court No. 1, Tarrant County, Tx., No. 77-2726 with his bond set by the Judge at only \$8,000.00.



The object of the complaint is to obtain relief against the fraudulent acts of the administrator, "Richards", and to compel a true account of the administration, in order that the real condition of the estate could be ascertained and the frauds and wrongs done be corrected and "Wiley" the sole heir paid what is due him.

The jurisdiction of the federal district court was denied by the Respondents, because in Texas, as in some other states, exclusive jurisdiction over all disputes concerning the duties or accounts of administration until final settlement is given to the local Probate Court, and as the administration complained of was still in progress in the Probate Court "Richards" was administering, he said that resort to correct the errors and frauds in the accounts must be had in that Probate Court or words to that effect.

The theory which "Richards" and Respondents seem to be advancing is that "Wiley",



were he a citizen of Texas, could obtain a redress of his grievances only through the local Probate Court, he had no better or different rights because he happened to be a citizen of Illinois. What does The Supreme Court of the United States say about that?

"Wiley's" claims in his complaint are somewhat as follows:

CLAIM NO. 1 : On or before October 19, 1984, Johnny W. Richards, II acting in his fiduciary capacity and therefore as trustee of the interests of the sole heir, M. Wiley Catlett, whose father's estate he was administering did breach his trust to the estate and its sole heir, this in collusion with others as will be shown, and did cause great loss and damages to the estate and its sole heir, M. Wiley Catlett, plaintiff therein.

"Richards" in collusion with others, namely: John R. Lively, and his client, Florence Iona Catlett who is the alleged wife of Pharon C. Catlett, Deceased. She is Pharon



's administratrix and an alleged part owner of the "AUBREY, TEXAS FARM". "Richards" allegedly sold part of that farm, some 39 acres to the AUBREY GROUP, composed of:

Joseph R. Kilianski, 1/3rd owner

David J. McGilvray, 1/3rd owner

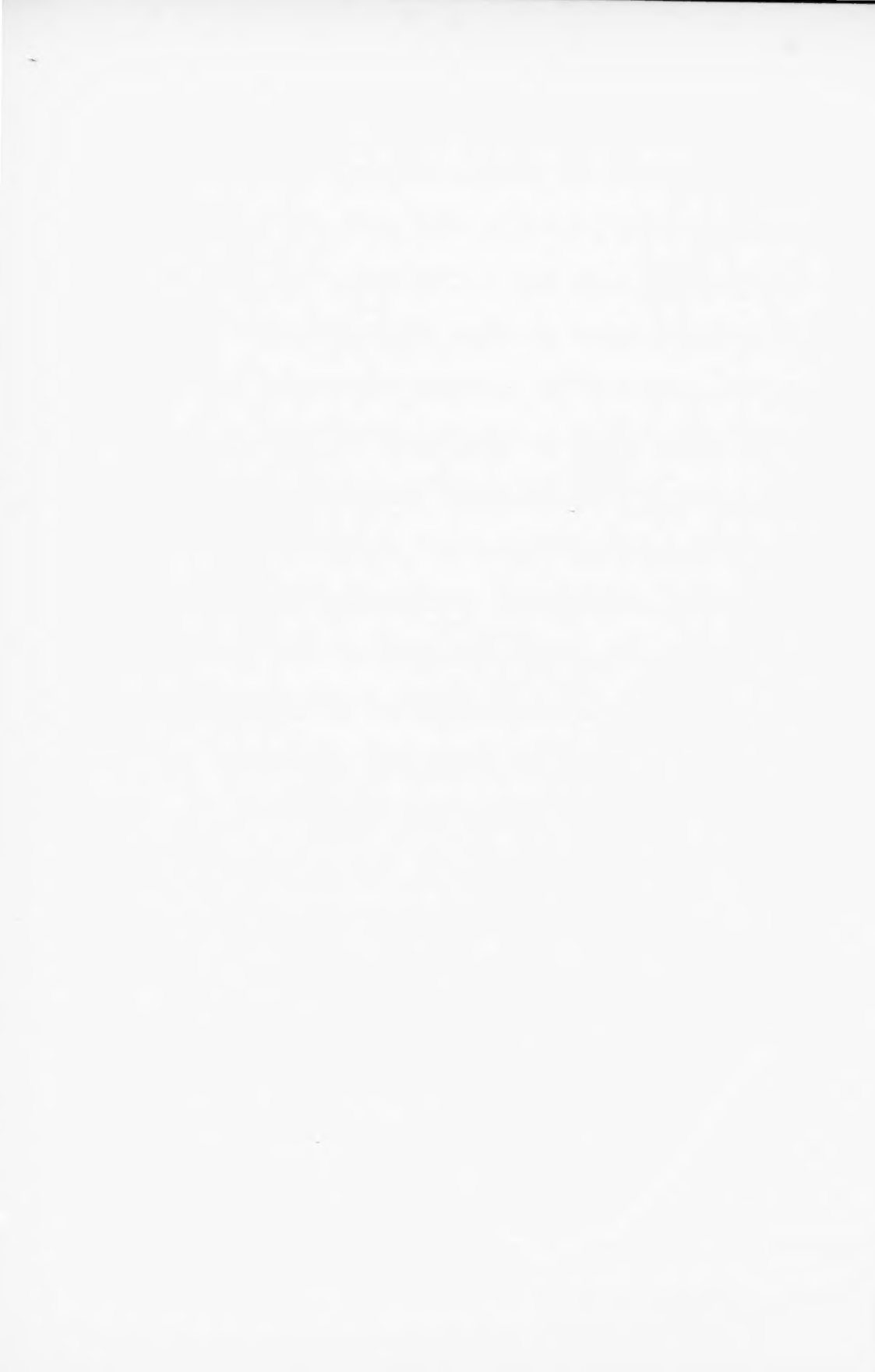
Sharon L. Tolcert, 1/3rd owner who was also

the listing broker for the listing agent Del Barron Associates of Tarrant County, Texas, and against L. M. Tolbert who is shown on the contract of sale as the buyer for the AUBREY GROUP, did devise a diabolical scheme calculated to defraud the estate of Ernest Luther Catlett, Deceased and its sole heir, M. Wiley Catlett.

The scheme which they concocted was for "Richards" acting in his fiduciary capacity to sell some 39 acres (no legal partition has ever been made of the AUBREY, TEXAS FARM) of land located in Denton County, Texas purportedly belonging to the estate - see the contract of sale and the Warranty Deed, No. 57214, vol 1511, pp. 17 thru 20, Real

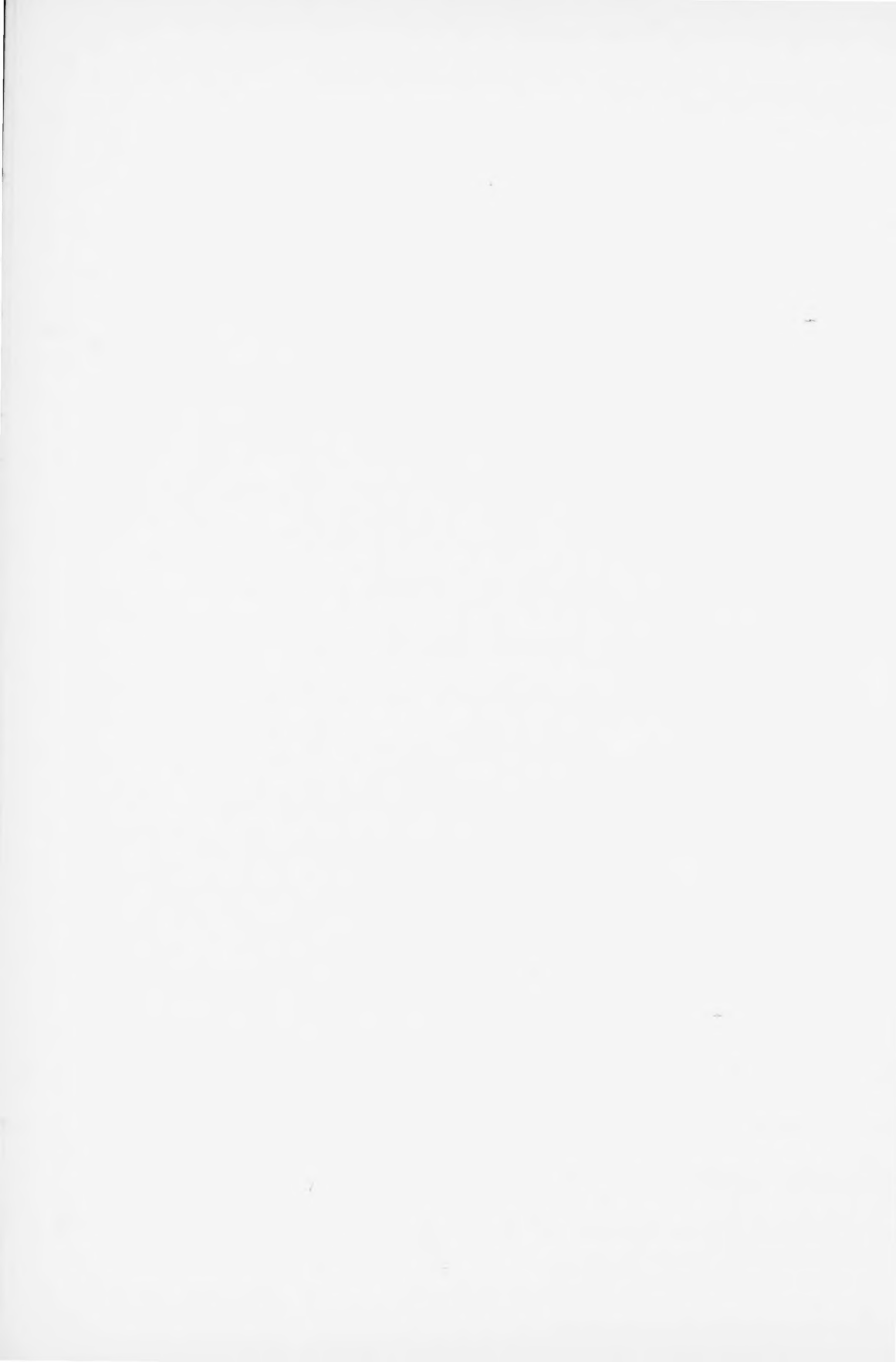


Property Records of Denton County, Tx., to the AUBREY GROUP, et al, for about \$2,000.00 per acre which was far below the true market value of that land at that time and all of those involved in the scheme knew it. The facts of this case as outlined in paragraphs therein clearly shows that the purported partition in Judge Narsutis' Judgments of October 4-14, 1982 were meaningless and void after the May 18, 1983 OPINION of the Second Supreme Judicial District Court of Appeals (APPENDIX "P", App. 50 thru 56) which reversed and remanded Cause No. 81-8158-B, below, Denton County, Tx. To date, there is no legal partition of the Aubrey, Texas Farm. Therefore, those descriptions contained in "Richards" "Motion for Authority to Sell Real Property" filed June 18, 1984, his Exhibit "A" therein and the Probate Court's ORDER of July 18, 1984 and said contract of sale and in the Warranty Deed are all meaningless and without legal foundation and void. Because no legal



partition has been made to determine just which part, if not all, of the Aubrey, Texas Farm belongs to the estate of Ernest Luther Catlett, Deceased. Further, it should be noted that some three and a half ( $3\frac{1}{2}$ ) years ago on April 6, 1981, attorney John R. Lively recorded telephone conferences with his client Florence Iona Catlett, Re: prospective purchaser and verbal offers of \$3,000.00 per acre by Pat Wilson, a real estate broker and a former Commissioner who was involved with the alleged partition of the estate with former Commissioner, Tom J. Fauts, and Realtor.

That is a loss of \$1,000.00 per acre from what the AUBREY GROUP paid. As a result of the conduct above alleged, in this claim, plaintiff has been and will be damaged in the amount presently unknown but believed to be in excess of \$34,500.00 in compensatory damages on only  $1/6$ th interest in said land. Damages are based on a value of \$3,000.00 per acre



(which is the "offer made to "FLO" @ 4-6-81 by Pat Wilson, Registered Realtor and former Commissioner).

Plaintiff, "Wiley" believes based on the chain of title and the fact that his father was the sole survivor and the time frames involved and the construction of Charlie Catlett's Will, both Charlie and Pharon predeceased Ernest, making Ernest owner of the entire (100%) of the Aubrey, Texas Farm.

In doing the acts above alleged defendants as named in this particular claim and each of them have acted fraudulently and oppressively thereby making this claim an appropriate case for punitive damages against defendants so named individually, each of them and collectively in the amounts of \$103,680.00 or such other amounts as the court may deem proper.

Further this claim points out that "Flo" and her attorney, John R. Lively's partition suit, No. 81-8158-B, in the 158th District



Court, Denton County, Tx. is still "pending" and that they neglected to name therein all of the necessary parties - some of whom they concealed. There has been NO LEGAL PARTITION made of said farm as will be shown in "ARGUMENT ON QUESTION NO. VII." herein.

Therefore, the estate's share or particular part has not been determined under Texas Law.

In the alternative, and without waiving the foregoing, plaintiff-"Wiley" states that the Court should declare a Constructive Trust. This for the protection of the interest of M. Wiley Catlett, sole heir of Ernest Luther Catlett and for the further reason that the chain of title will show that M. Wiley Catlett inherited the whole, 100%, 6/6th's of the Aubrey, Texas Farm. See the copy of the "Authority of the Chain of Title and Construction of Charlie's Will which is attached as Exhibit "J" in "Wiley's" Complaint and see APPENDIX "F", App. 10 & 11 and APPENDIX



"S", App. 61 thru 71 therein.

Because "Richards" was acting in his fiduciary capacity, he is accountable in equity and law. STRATES v. DIMOTSIS (CA5th - 1940) 110 F2d 374, cert denied, 311 US 666, 85 L.E. 427, 361 S.Ct. 24. See also, DOING v. RILEY, 176 F2d 449, at p. 457, "(15) constructive trust is imposed not because of the intention of the parties but because the person holding title of the property would profit by a wrong or would be unjustly enriched if she were permitted to keep the property."

CLAIM NO. 2: The allegations of John R. Lively in his Authenticated Claim filed on January 25, 1985 (note the date of that claim) in connection with the Estate of Ernest Luther Catlett, Deceased, in the Probate Court of Tarrant County, Texas that he was the owner of a claim in the amount of \$42,228.00 in legal fees allegedly incurred as a result of a purported breach of contract by the "prior administrator of this Estate" (not a legal entity) were intentionally false and misleading and were intended to and did in fact result in a fraud upon the Court and upon the



Estate of Ernest Luther Catlett, Deceased, and its sole heir, M. Wiley Catlett, who is Petitioner herein. As a result of Lively's fraud, the Judge of the Probate Court of Tarrant County, Texas, signed his Order approving the payment of Lively's claim and authorizing payment (see APPENDIX "W", App. 80 & 81) by Johnny W. Richards, II, Successor Administrator, in the amount of \$41,684. out of the assets of the Estate of Ernest Luther Catlett, Deceased.

Petitioner, as sole heir of his father, Ernest Luther Catlett, and the only person entitled to receive distribution from any assets of the Estate of Ernest Luther Catlett, Deceased, remaining on hand at the close of Administration, has suffered actual damages as a result of the above-described fraud by Lively in the amount of \$41,684.00 and is entitled to recover his damages from John R. Lively.

Petitioner's claim is not barred by res



judicata because extrinsic fraud in connection with procuring judgment renders the judgment null and void and, therefore, the order of the Tarrant County, Texas Probate Court of February 8, 1985 (APPENDIX "W", App. 80 & 81) No. 77-2726 approving Lively's above-described authenticated claim is void.

CLAIM NO. 3: The actions complained of by John R. Lively were performed with the knowledge that he had no contract with the prior Administrator of the Estate of Ernest Luther Catlett, Deceased. Lively's allegations were, therefore, intended to defraud the Estate and its sole heir by recovering a highly excessive claim for attorneys' fees out of the Estate of Ernest Luther Catlett, Deceased, to which fees he was not entitled.

Therefore, the actions of John R. Lively complained of herein constituted willful and intentional fraud as a result of which Petitioner has suffered actual damages in the amount of \$41,684.00, and Petitioner is en-



titled to recover exemplary damages from John R. Lively, which exemplary damages Petitioner alleges to be at least \$300,000.

CLAIM NO. 4: Johnny W. Richards, II, While acting as Successor Administrator of the Estate, knew that the allegations contained in Lively's Authenticated Claim complained of herein were false and misleading and that Lively had no contract with the prior Administrator of the Estate that Richards was representing. Further, Richards made no attempt to notify Petitioner of Lively's claim, although a written request for such notification had been made on May 24, 1983 to Sarraine S. Krause the prior Successor Administrator, and although Petitioner is the sole heir of Ernest Luther Catlett, Deceased.

In allowing Lively's Authenticated Claim, and in presenting the claim to the Probate Court of Tarrant County, Texas for approval for payment out of the assets of the Estate

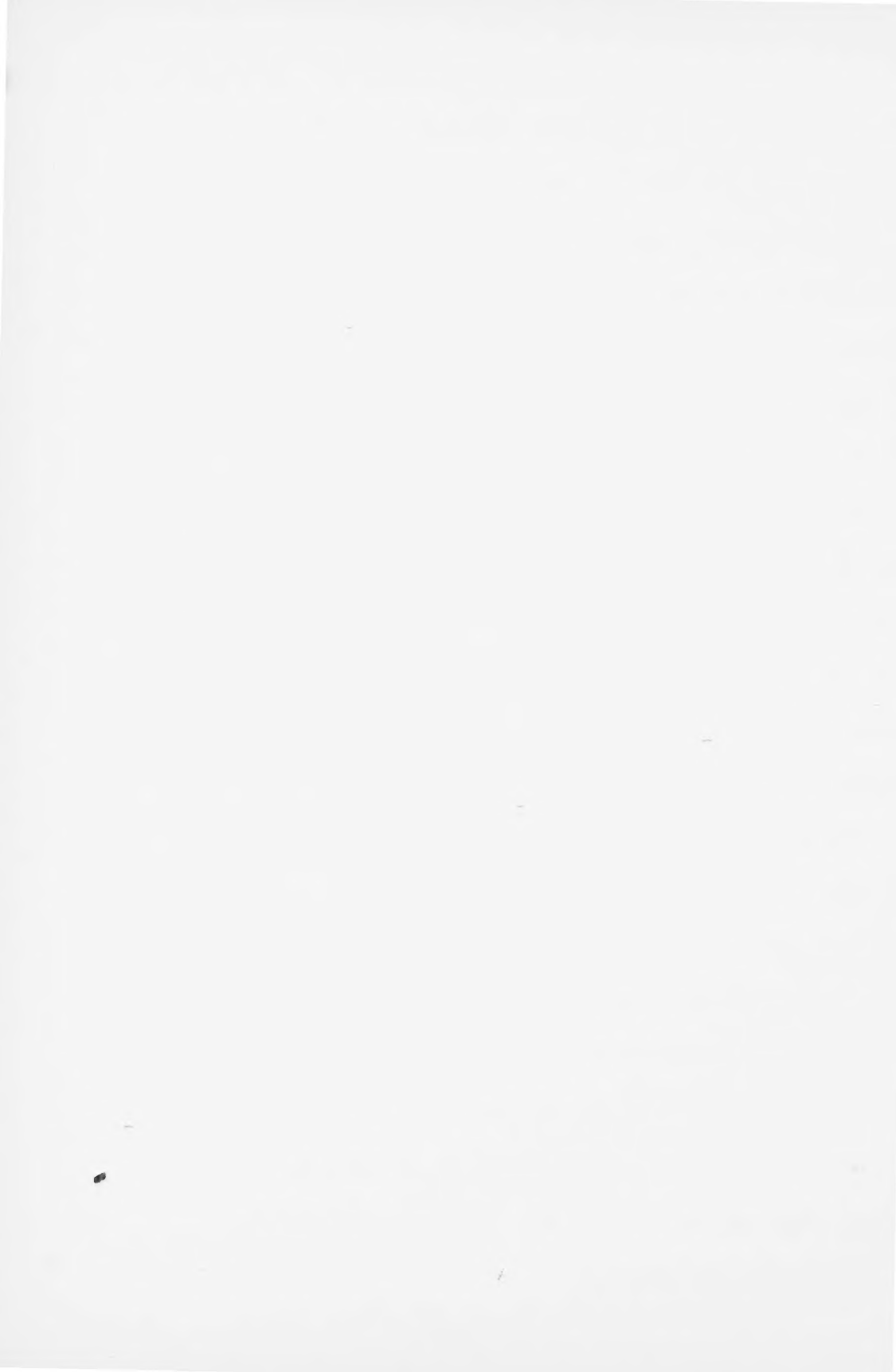


of Ernest Luther Catlett, Deceased, without any notice to Petitioner of the claim, Richards participated in Lively's fraud upon the Court and upon the Estate and its sole heir.

As Successor Administrator of The Estate of Ernest Luther Catlett, Deceased, Johnny W. Richards, II, had a fiduciary duty to the Estate and its heir to conserve Estate assets, to investigate the propriety of any claims against the Estate, and not to mismanage or squander said assets by allowing frivolous or fraudulent claims.

Johnny W. Richards, II, by participating in the fraud committed upon the Estate by John R. Lively, also committed fraud and thereby breached his fiduciary duty to the Estate of Ernest Luther Catlett, Deceased, and its sole heir, M. Wiley Catlett.

Therefore, Petitioner is entitled to recover his actual damages as heretofore alleged from the surety on the Administrator's



bond of Johnny W. Richards, II, which surety is Western Surety Company.

Further, because Richards breached his fiduciary duty to the Estate of Ernest Luther Catlett, Deceased, and to its heir, M. Wiley Catlett, and by committing fraud against the Estate and its heir, Petitioner is entitled to recover his actual damages as hereitofore alleged from Johnny W. Richards, II, Individually.

CLAIM NO. 5: The conduct of Johnny W. Richards, II, complained of in the Fourth Claim hereinto fore was knowing and willful and was intended to and did in fact result in the perpetration of fraud upon the Court and upon the Estate of Ernest Luther Catlett, Deceased, and upon its sole heir, M. Wiley Catlett. Therefore, Petitioner is entitled to recover exemplary damages against Johnny W. Richards, II, individually, which exemplary damages Petitioner alleges to be at least \$300,000.00



CLAIM NO. 6: Petitioner is entitled to receive pre-judgment interest on his actual damages of \$41,684.00 from February 8, 1985 until paid, at the legal rate, compounded daily.

CLAIM NO. 7: In the alternative, and without waiving the foregoing, Petitioner alleges that the actions of Johnny W. Richards, II, and the Probate County Clerk of Tarrant County, Texas, in failing and refusing to notify him or his attorney of record of the Authenticated Claim of John R. Lively, and the proceedings in connection therewith as well as the Claim of Attorney Steven J. Williams for \$5,172.48 in alleged attorneys' fees paid on March 11, 1985 by Johnny W. Richards, II, as well as other wrongs of mismanaging and squandering in connection with his father's Estate after Petitioner had filed a request for notice pursuant to Texas Probate Code, Section 33(j) violated Petitioner's rights of due process under the Vth



and XIVth Amendments of the Constitution of the United States (APPENDIX "X", App. 82).

Under the laws of the State of Texas, the property of an ancestor vests immediately upon death of the ancestor in the intestate's heirs at law. Petitioner is the sole heir of Ernest Luther Catlett, and is therefore, the owner of any and all property of the decedent in the hands of Successor Administrator, Richards. Therefore, the actions of Richards and Madrin Huffman, as Probate County, Clerk of Tarrant County, Texas, in failing to notify Petitioner of the proceedings in connection with Lively's Authenticated Claim and others and other matters after notification by "Wiley's" attorney of record, William L. Smith, Jr., of Denton, Texas of their desire to be notified and to be heard in connection with all the proceedings therewith, deprived Petitioner of his land without due process of law in violation of his rights under the Vth and XIVth Amendments to the Constitution of the United States.



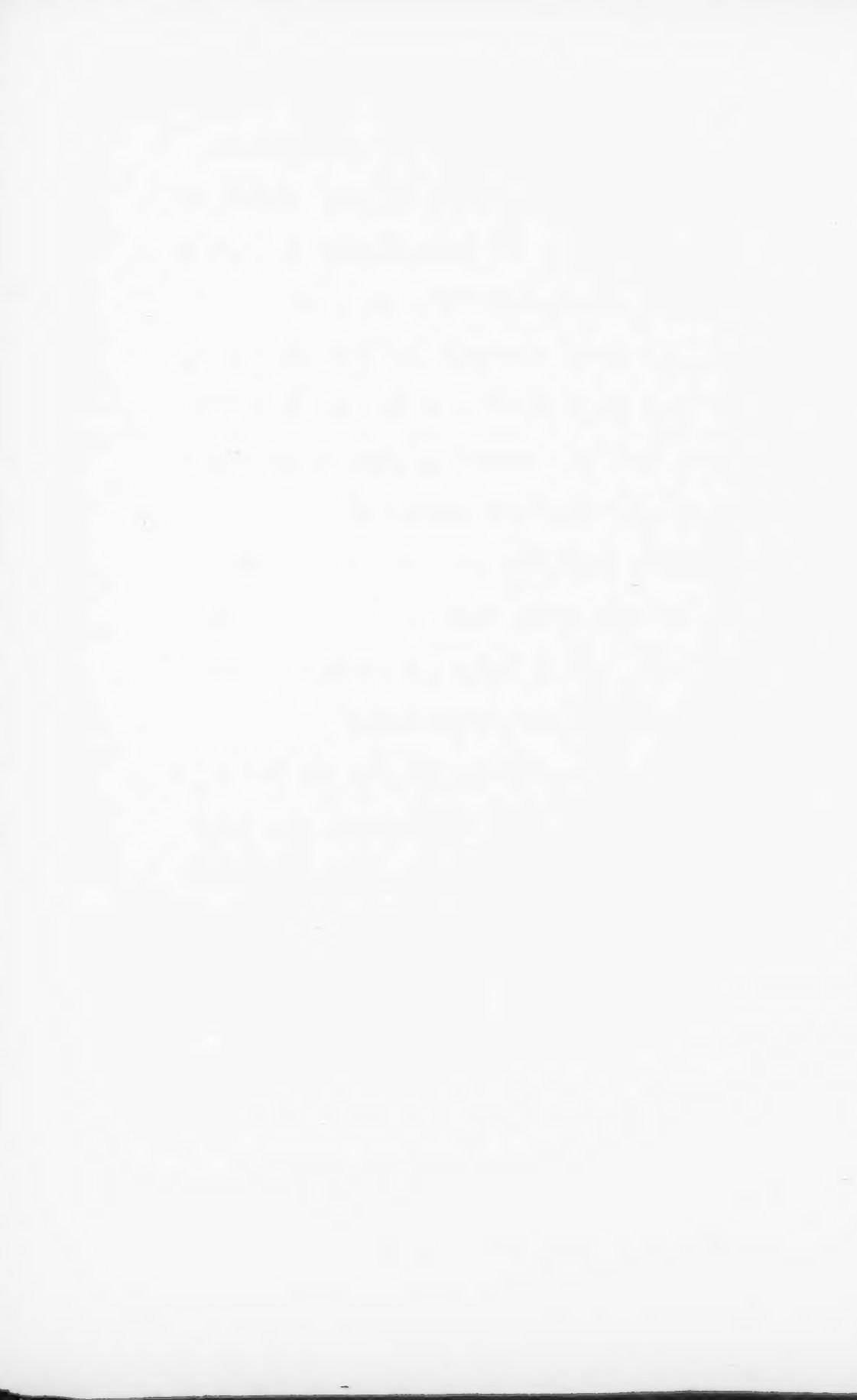
As a result of the denial by Defendants, Richards and Madrin Huffman, County Clerk of Tarrant County, Texas, of Petitioner's rights of due process (APPENDIX "X", App. 82), Petitioner has been damaged in the amount of \$41,684.00 and \$5,172.48 a total of \$46,856.48, Lively's and Williams' claims plus other amounts that was paid by Richards, plus interest on those amounts at the legal rate, compounded dailey from February 8, 1985 and March 11, 1985, until date of payment thereof.

WHEREFORE, PREMISES CONSIDERED,

Petitioner prays that Respondents-Defendants as herein named be cited to appear and answer herein, and upon trial hereof Petitioner-Plaintiff have judgment against defendants as follows:

CLAIM NO. 1:

1. For actual damages in the amount of \$34,560 or the fair and just amount;
2. For exemplary damages of at least \$103,680 or the fair and just amount;
3. In the alternative, impose a constructive trust;



CLAIM NO. 2:

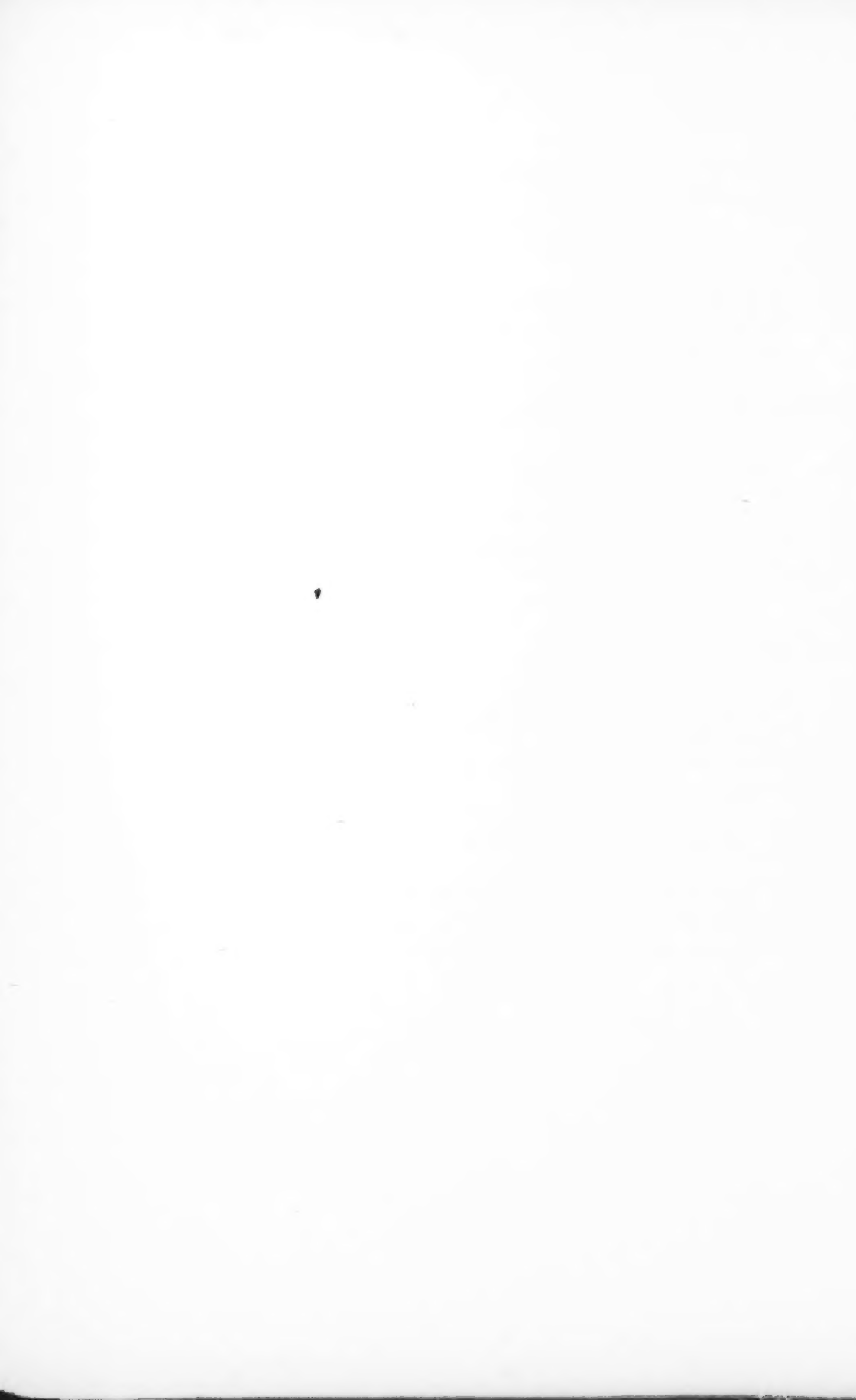
4. For actual damages in the amount of \$41,684.00; against John R. Lively; or Johnny W. Richards, II, Individually;
5. For exemplary damages of at least \$300.00.00; against Defendant John R. Lively;

CLAIM NO. 3: and CLAIM NO. 4:

6. For actual damages in the amount of \$5,172.48; against Johnny W. Richards, II, Individually;
7. For exemplary damages of at least \$300.00.00; against Defendant Johnny W. Richards, II, Individually;

CLAIM NO. 5:

8. For pre-judgment interest on \$41,684 from February 8, 1985, and \$5,172.48 from March 11, 1985 until paid with compounding daily;
9. For costs of suit; and
10. For such other and further relief, both in law and in equity, to which Plaintiff may show himself justly entitled.



A R G U M E N T S

This case is not a "REVIEW" of any former Texas State Court case by a Federal District Court as Judge Paul Brown mistakenly supposed and could not be; however, assuming arguendo, which Petitioner strongly contends otherwise, that this case could only be "reviewed" by The Supreme Court of the United States; if so, Petitioner is indeed in the right court. (Question No. 1, page 1 herein)

The facts in "Wiley's" claims clearly shows that the heir's claims is for money due to the squandering of the assets by "RICHARDS" in cooperation with other defendants as described in the claims, some \$41,684.00 plus in actual damages and som \$600,000.00 plus in exemplary damages. (See pages 8 thru 23 herein)

Contrary to "RICHARDS" AND "LIVELY" AND "FLO", et al see EDDY V. EDDY (CA6th - 1903) 168 F 590, ert.denied, s214 US 518, s53 L.Ed.



1065, s29 S.Ct. 699, at 601, where the court said:

"It is contended by counsel for the appellees that the accounting should not be undertaken by the federal court, but should be left to the probate court. We, are, however, of a different opinion. The duty of the federal court in such cases is not discharged by the mere declaration of rights of parties in general terms which are abstract and reach no concrete results. Having jurisdiction to determine the validity of a claim, it has authority to settle and determine its scope and limitation, and, if the claim is for money the amount which the plaintiff is entitled to receive. To this extent, at least, the power of the federal court is as ample as that of the state court, and, when the former is invoked by a citizen of another state, its exercise cannot rightfully be denied."

"Ernest's Estate" had no funds, only an interest in "Wiley's" grandfather and grandmother's homestead of @ 225.1 acres - the AUBREY, TEXAS FARM; however, it did have obligations.

"Wiley's" father "Ernest" was about 86 years old and suffered from senile dementia and chronic organic brain syndrome (APPENDIX "T", App. 72 & 73), see Dr. Walter L. Geyer's



letter of 7-26-76. Ernest had two brothers, Charlie and Pharon, who were in a confidential & fiduciary relationship with Ernest; therefore, they owed him a duty not to take advantage of Ernest's old age and illnesses.

STRATES v. DIMOTSIS (CA5th - 1940) 110 F2 d 374, 376, writ, cert.denied, s311 US 666, s85 L.Ed. 427, s61 S.Ct. 24, where Circuit Court Judge, McCord stated: ". . . this suit was brought by the surviving heirs of George Strates to impress a trust upon certain real estate in Corpus Christo Texas" On p. 376 the court said: "(5,6) . . . . Moreover, George Strates and J. L. Dimotsis stood in a further confidential relationship through close ties of kinship, (See CofA p. 7 F C, par. 31 in Exhibit "J" in "Wiley's" Complaint)

Further, the facts and events in the above claims only occurred, since "RICHARDS" became the Successor Administrator on March 22, 1984; therefore, they could not be a "review" of any Texas State Court case, heretofore made by a Federal District Court.

Question No. 2 (see page 11 herein) deals with "Richards" defrauding "Ernest's Estate" and its sole heir by paying on February 8, 1985, \$41,684.00 of "Lively's" alleged claim.



APPENDIX "Y", App. 83 & 84, page 1 only  
of JOHN R. LIVELY'S claim reads in part:

" 1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of \$42,228.00 . . ." The language of "LIVELY'S" alleged claim is clear and unambiguous. In FROST NAT. BANK OF SAN ANTONIO v. NEWTON, TEX.SUP. CT., 1977, 554 S.W.2d 149 on p. 153 that Court stated: "(2) . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument, "REPUBLIC NATIONAL BANK of DALLAS v. FREDERICKS, TEX.SUP.CT., 1955, 283 S.W.2d 39, 49, 155 Tex. 79. No speculation or conjecture regarding the intent of the testatrix is permissible where, as here, the will is unambiguous, and we must construe the will based on the express language used therein. HUFFMAN v. HUFFMAN, 161 Tex. 267, 339 S.W.2d 885 (1960)

That alleged claim by "LIVELY" that he is the owner of a claim against this Estate, is a sham and a fraud on the estate and its sole heir, M.Wiley Catlett. "LIVELY" in his alleged claim says that he "is" the owner of a claim against "this Estate". If he really "is" the owner, then he must have a contract of a judgment in the amount of \$42,228.00



which would prove that "LIVELY" "is" the owner of such a claim against "this Estate".

"LIVELY" doesn't have any such contract or judgment and "this Estate" , is not a legal entity. "LIVELY" knew that he didn't have any such contract or judgment or claim when he presented it to "The Estate of Ernest Luther Catlett, Deceased", "this Estate".

"An Estate" or Estate" or "this Estate", in Texas is not a legal entity and cannot sue or be sued or file a motion. "The estate of a deceased person is not a legal entity, and cannot sue or be sued as such. BROOKS v. MAHOUZ (1977) Civ.App.Tex., 554 S.W.2d 292, n.w.h., see p. 293; NEBLETT v. BUTLER (1942) Tex.Civ.App. 162 S.W.2d 458, writ ref.w.o.m. (estate cannot sue, or appeal or file brief); CAMELLA DICED CREAM CO. v. CHANCE (1966 CA) 339 S.W.2d 558; PRICE v. ESTATE of ANDERSON (1975 Tex.) 552 S.W.2d 690 see p. 691 (1,2)".

Therefore, "LIVELY'S" alleged claim is a sham and a fraud and void and a nullity. He further states: "This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate." In that sentence, "LIVELY" indicates that he has a "contract" - never produced.



"LIVELY" nor the Successor Administrator, "RICHARDS" never produced any alleged contract, nor is "RICHARDS" name even mentioned in "LIVELY'S" alleged claim for \$42,228.00 in attorney's fees which is not proper under Art. 2226, V.A.T.S. - a suit for statutory attorney fees as a separate action cannot be maintained.

NATIONAL HOMES CORP v. C. J. BUILDERS, INC, (CA 1965) 393 S.W.2d 949, err.dismd. "A suit for statutory attorney fees cannot be maintained as a separate cause of action." JON-T FARMS, INC. v. GOODPASTURE, INC. (CA 1977) 554 S.W.2d 743, RNRE, at p.752 (17-18).

The word "attached" alone in that third sentence of "LIVELY'S" claim is not sufficient under Texas Law to incorporate his document - Exhibit "A" - into his alleged claim. TAYLOR v. REPUBLIC NATIONAL BANK OF

DALLAS, et al (Tex.Civ.App. 1970) 452 S.W.2d 560, ref.n.r.e., at p. 563, "2,3) 1. The word "attached" is not equivalent to "incorporated" . . . (4) 2. The document in question is not sufficiently described in the will to be capable of identification . . . Brooker v. Brooker, 130 Tex. 27, 106 S.W.2d 247, 253 (1937); Adams v. Maria, 213 S.W. 622 (Tex. Comm'n. 1929); Allday v. Spengler, 343 Ill. 476, 175 N.E. 781 (1931)

In this case, Texas law is controlling.

Further, "LIVELY'S" client "FLO" on or



about October 25, 1982 filed a previous claim for "LIVELY'S" attorney's fees in the amount of \$8,840.00 on October 25, 1982 in the same Probate Court and Cause No. 77-2726 Tarrant County, Texas which first claim was rejected by the Administrator on November 15, 1982 which first claim for "LIVELY'S" attorney's fees was not sued on by her in the Texas District Court within 90 days as required by Texas Law, V.A.T.S., Prob., Sections, 308, 309, 310, 313; RUSSELL & ALLEN v. DOBBS (1962 - Tex.) 163 Tex. 282, 354 S.W.

2d 373 at p. 286, where the Texas Supreme Court said: " Section 313 provides that when a claim or a part thereof has been rejected by the representative the claimant shall institute suit thereon within ninety days after such rejection, or the claim shall be barred. . . . "

The exception to this rule, would be as it relates to the heir, M. Wiley Catlett, who is a nonresident of Texas and who was never notified of any of the proceedings in the Probate Court as requested on May 24, 1983 (See Pl. Ex. "G" in the Complaint)



"RICHARDS" knew of the MARCH 22, 1984  
 (FILE MARKED) "INVENTORY, APPRAISEMENT &  
 LIST OF CLAIMS" - OF WHICH DOCUMENT THE  
 HEIR WAS NOT NOTIFIED OF - SHOWING THAT THE  
 FORMER ADMINISTRATOR, M. WILEY CATLETT, WAS  
 OWED \$18,591.34(as of that date); yet, the  
 heir never received any notice or hearing  
 from either "RICHARDS" or the Probate  
 Tarrant County, Texas Clerk as requested;

PENNOYER v. NEFF (1877) 95 US 714, 24  
 L.Ed. 565 at p. 573; MULLANE v. CENTRAL  
 HANOVER B. & T. CO. (1950) 339 US 306-321,  
 94 L.Ed. 865, 70 S.Ct. 652 at 872 or 312;  
 TULSA PROFESSION COLLECTION SERVICES, INC.  
 v. POPE (1988) 485 US \_\_\_\_\_, 99 L.Ed.2d  
 565, 108 S.Ct. 1340, Justice O'Connor de-  
 livered the OPINION: This case involves  
 a provision of Oklahoma's probate laws re-  
 quiring claims "arising upon a contract"  
 generally to be presented to the executor  
 of the estate within 2 months of the  
 publication of a notice advising creditors  
 of the commencement of probate proceedings.  
 . . . The question presented is whether  
 this provision of notice solely by publica-  
 tion satisfies the Due Process Clause.  
 HELD to violate due process clause of  
 14th Amendment.

Clearly, "RICHARDS" and Madrin Huffman,  
 former Probate County Clerk violated  
 "Wiley's" rights under the 5th and 14th  
 Amendments of the Constitution of the United  
 States to due process of law.



Further, as shown herein, "Wiley's" seven (7) claims against Successor Administrator and his surety and the other Respondents herein is directly in point with PAYNE v.

HOOK, 1868, 7 Wall 425, 74 US 425, 19 L. Ed. 260 at 261-262 - the proper diversity of citizenships exists - is directly in point and controls the present case.

In that case, the plaintiff filed a bill in the federal court for Missouri against an administrator and the sureties on his official bond, to obtain her distributive share in a certain estate (that of her brother Felding Curtis, who died intestate in Calloway County Missouri). Plaintiff was Ann Payne, a citizen of Virginia.

The object of the bill was to obtain relief against the fraudulent acts of the administrator, and to compel a true accounting of the administration, in order that the real condition of the estate could be ascertained and the complainant paid what belonged to her.

As mentioned on page 2 herein, the jurisdiction of the federal court was denied by the defendants, it was said that a resort



must be had to that probate court to correct the errors and frauds in the accounts of the administrator.

However, The Supreme Court has repeatedly HELD "that the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power"; and that the equity jurisdiction conferred on the federal court is the same that the High Court of Chancery in England possesses, is subject to no limitation nor restraint by state legislation, and is uniform throught the different states of the Union.

It was therefore HELD that the federal court had jurisdiction to hear and determine the controversey, notwithstanding the peculiar structure of the Missouri probate system, and was bound to exercise it, if the bill, according to the received principles of



equity, states a case for equitable relief.

It was HELD that a court of chancery, as an incident to its power to enforce trusts and make those holding a fiduciary relation, account, has jurisdiction to compel executors and administrators to account and distribute the assets in their hands, and that the bill under consideration had the object and nothing more; that it sought to compel the defendant Hook to account and pay over to Mrs. Payne her rightful share in the estate of her brother, and in case he should not do it, to fix liability of the sureties on his bond.

In other words, an action against fiduciaries for an accounting is a proper ground of equitable jurisdiction.

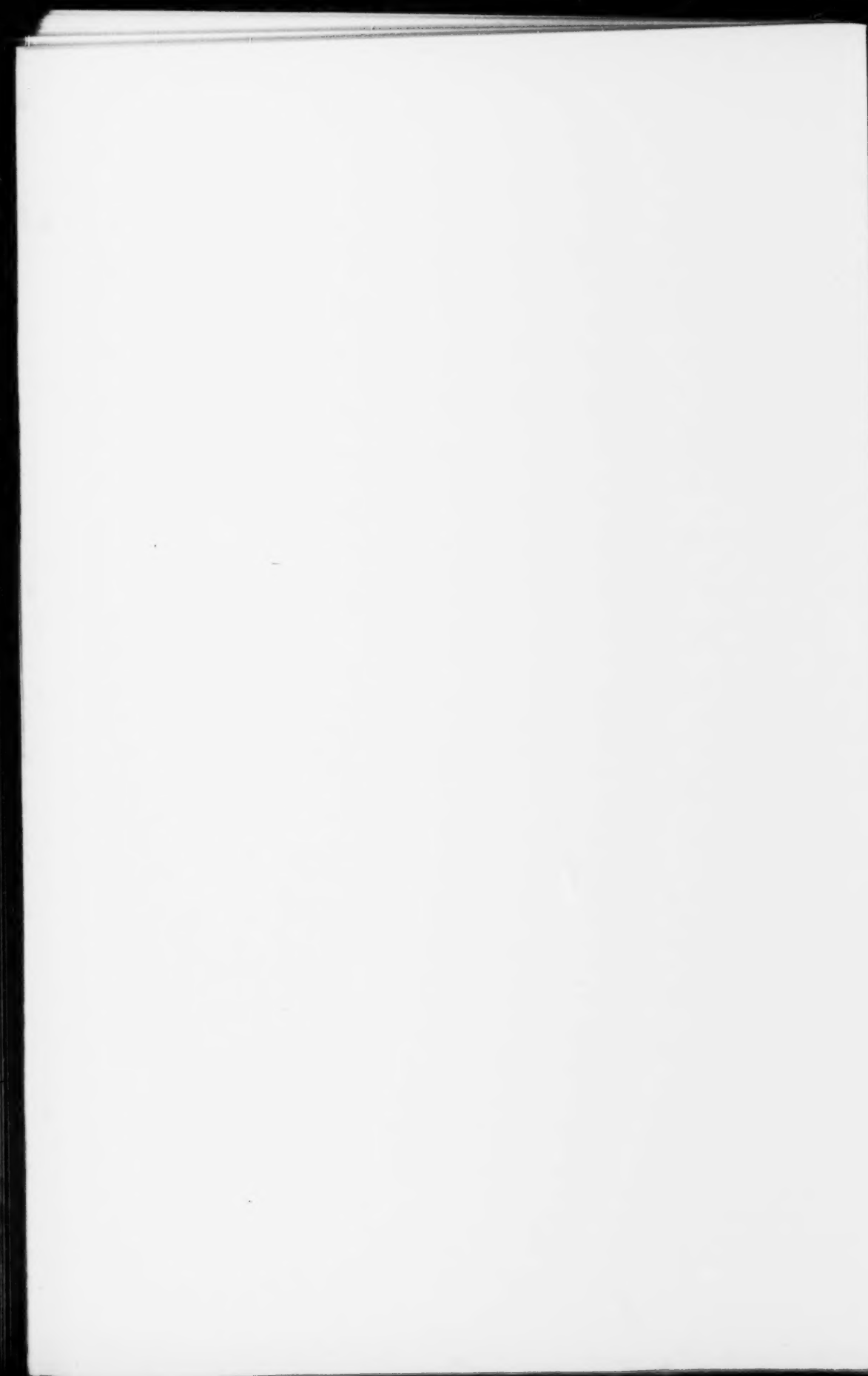
The Subject was fully considered by The Supreme Court and the cases reviewed and the principles stated in WATERMAN v. CANAL-LOUISIANA BANK & TRUST CO., 215 US 33, 30 S.Ct., 10, 12, 54 L.Ed. 80, supra (See p. 84 or p. 43 therein, maintaining the right of Federal courts of chancery to exercise original jurisdiction in favor of creditors, legatees and heirs, to establish their claims and have a proper execution of the trust as to them." Eight cites omitted.



"Wiley's" Question No. III (page iv herein) deals with the fact that none of the defendants, file an "ANSWER", as such (See the District Court's Docket sheets.) Hence, no "reply" is possible or proper under Rule 7(a) Federal Rules of Civil Procedure; Wright and Miller, Federal Practice and Procedure; Civil Sect. 1185, note 28, p.17 and note 32, p.18, "Reply Improper" TRAYLOR v. BLACK, SIVAL. & BRYSON, INC. (CA8th, 1951)189 F2d 213 where the court said: "Reply not permissable except to counter-claim denominated as such, or by order or leave of court granted in its sound discretion."

Since none of the defendants filed any "ANSWERS" as such; they could not contain a counter-claim denominated as such. And none of their "Motions to Dismiss" contained any counter-claim denominated as such either.

Hence, no "reply" by Plaintiff was necessary nor appropriate, KANSAS-NEBRASKA NATURAL GAS CO. v. VILLAGE OF DSHLER, NEBRASKA (U.S.Dist. Ct. D.Nebr.1960) 192 F.Supp. 303 at p.311 where the court said; "(1) The service and filing herein of a reply by Plaintiff was neither necessary nor appropriate, Rule 7, Federal Rules of Civil Procedure, 28 U.S.C.

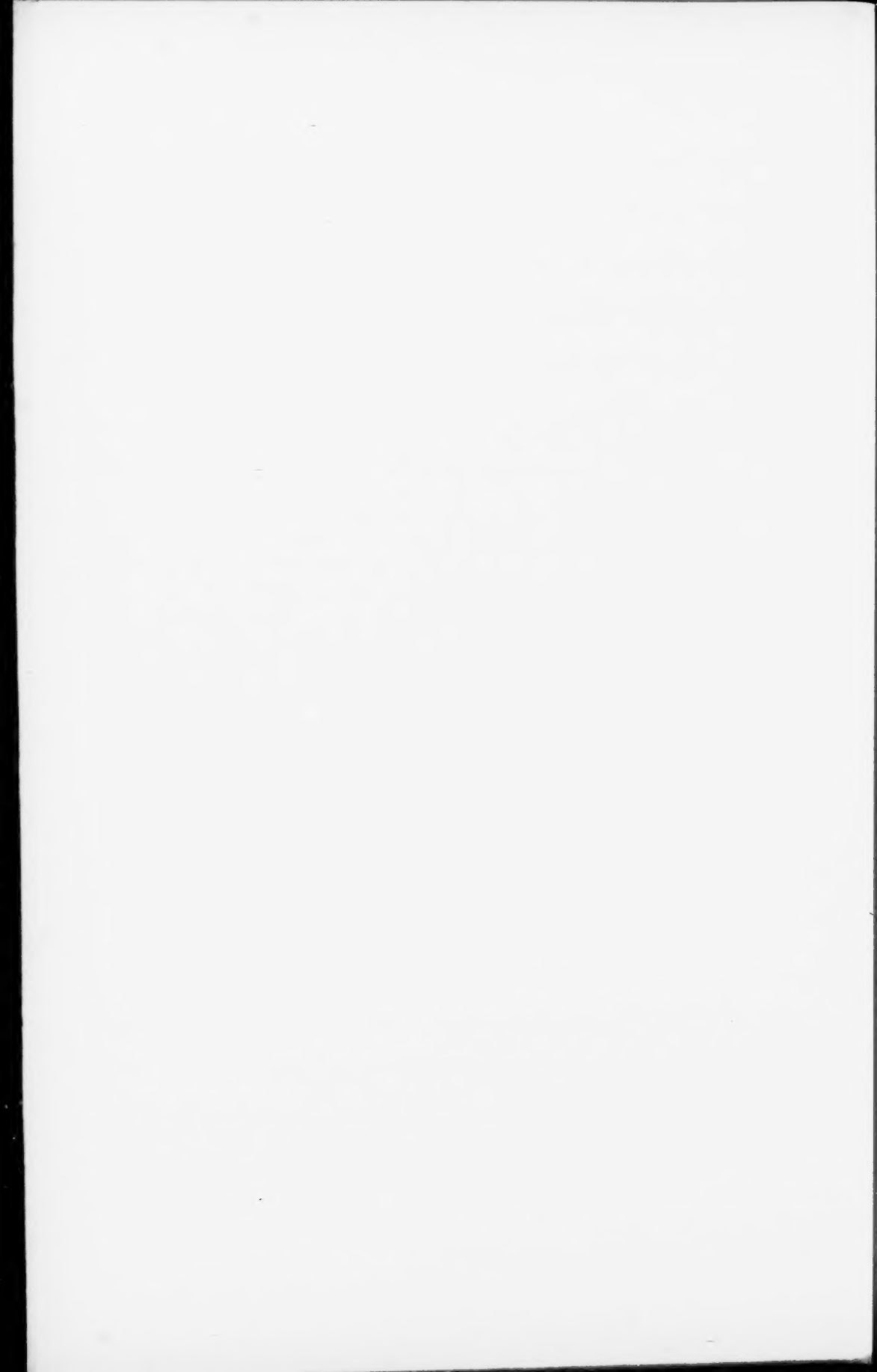


Judge Brown, U.S. Dist. Ct., did err in dismissing "Wiley's" complaint; since none of the defendants-respondents ever filed a "Pleading" as required by the F.R.C.P., Rule 7(a). (See p. 9 "Wiley's" brief)

"Pleading within meaning of Rule 7(a) does not include "motion to dismiss" complaint for failure to state cause of action" LIPPMAN, INC. v. HEWITT-ROBINS, INC (1977) E.D.Wis. 55 F.R.D. 439, 16 FR Serv.2d 199; Pleading. There shall be a complaint and an answer; 28 U.S.C., 7(a); Motions are not Pleadings (2A Moore's Federal Practice 2d. Ed., par. 7.05 accordingly, the filing of a motion to dismiss is not a responsive pleading. ZAIDI v. EHRICH (CA5th 1984) 732 F2d 1218; "Motion to Dismiss under Rule 12 is not a "Pleading" as defined by Rule 7(a) CHILVIS v. SECURITIES & EXCHANGE COMM (1979 ND Ga) 28 FR Serv.2d 1065

Further, under the F.R.C.P., res judicata and statute of limitations are deemed to be "affirmative defense" under Rule 8(c), 28 U. S.C.A., following sect. 723c. Therefore, those affirmative defences cannot be granted under a Rule 12(b) "motion to dismiss".

JONES V. MILLER (D.C.W.D.Penn 1942) 2 F. D.R. 479; JENKINS v. McKEITHEN (1969) 395 US 411, 89 S.Ct. 1843, 23 L.Ed.2d 404 at 416-417; CONLEY v. GIBSON (1957) 355 US 41, 2 L.E. 2nd, 80, 78 S.Ct. 99 at p. 84; HOLMBERG v. HANNAFORD (1939, D.C.OHIO) 28 F.Supp. 216



Further and perhaps, most importantly to "Wiley" Petitioner who is not a lawyer, is the fact that Judge Paul Brown mislead him through Judge Brown's half or partial quote of the "standard" by which a complaint can be dismissed under a motion to dismiss, Fed. Rules, Civ. Proc., Rule 12(b)(6), 28 U.S.C.A.

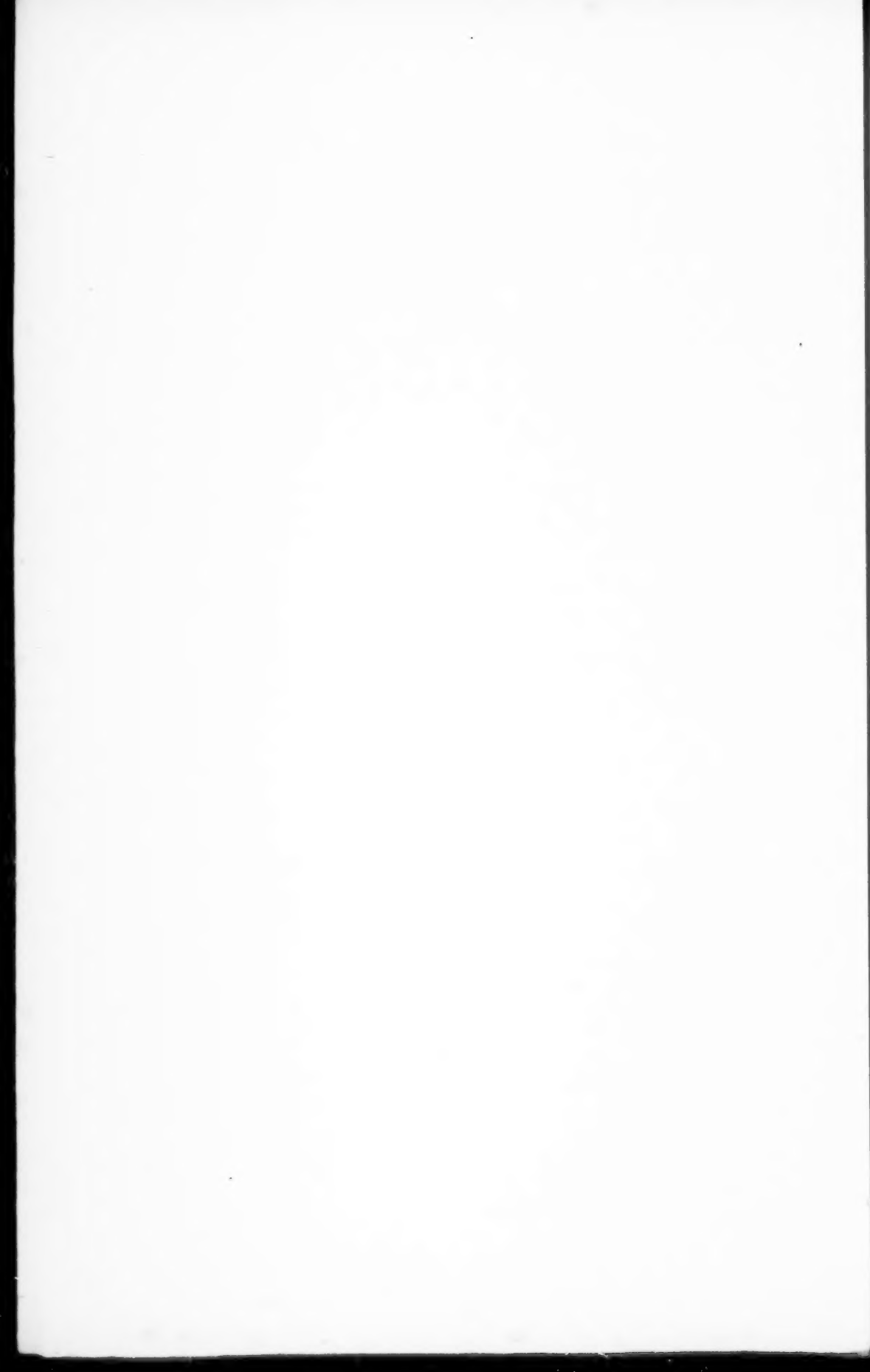
Judge Brown on page 3, par. 1 of his MEMORANDUM OPINION of April 18, 1989 (APPENDIX "A" & "B", App. 1 thru 4 thereof) reads:

"In considering the defendant's various motions to dismiss, the allegations in plaintiff's complaint must be taken as true and construed in a light most favorable to plaintiff. HISHON v. KING & SPALDING, 104 S.Ct. 2229 , 2232 (1984)."

Since, Judge Brown used that partial and inadequate "standard" injustice has been done to "Wiley's" complaint. The leading

case on "Pleading" is CONLEY v. GIBSON, 1957, 355 US 41, 2 L.Ed.2d 80, 78 S.Ct. 99 at 84 or 45 where Justice Black states:

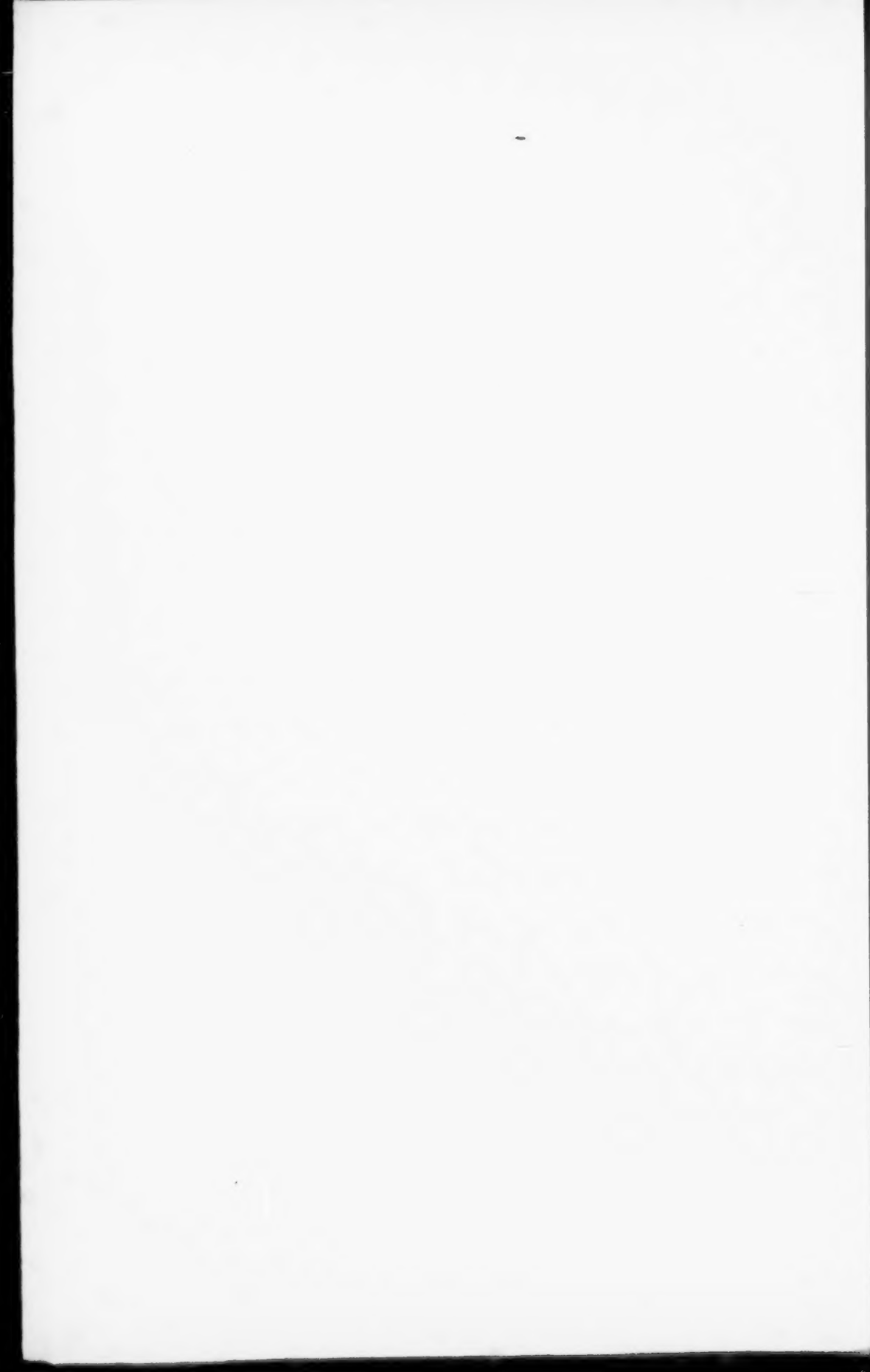
"In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ; Hishon v. King & Spalding, supra, cites CONLEY v. GIBSON on p. 2232. Conclusion: Judge Brown did ERR.



"Wiley's" question No. IV. (page v. here-  
in) deals with his request in his complaint  
to have the Federal District Court to construe  
just two sentences of the SECOND PROVISION of  
his uncle Charlie Catlett's will (See com-  
plaint Ex. "A" & "J", thereof, Fed.R.Civ.P.,  
Rule 10(c) an exhibit which is a part of the  
complaint is a part thereof for all purpose.)  
And the FIFTH CIRCUIT also was requested in  
"Wiley's" opening and reply Briefs to con-  
strue Charlie Catlett's will.)

(See APPENDIX "F" and "S", App. 10 & 11  
and App. 61 thru 71 thereof.) Where there is  
a diversity jurisdiction, as in the instant  
action, the FIFTH CIRCUIT COURT OF APPEALS  
has HELD that it was proper for the U. S.  
District Court to declare judgment for the  
construction of a portion of a will under  
which the plaintiff claimed that both it and  
the defendant were remaindermen of a trust  
created by the will.

The court stated the general proposition  
that a suit between parties seeking declara-  
tion of their rights in a remainder interest



devised under a testamentary trust is a civil suit or controversey within the meaning of federal jurisdiction and not a proscribed probate proceeding, where the suit does not attack the will but affirms it, seeking only construction of its terms"

NATIONAL AUDBON SOCIETY v. MARSHALL (CA5th - Ga 1970) 424 F2d 717.)

"Wiley" is not attacking "Charlie's" will, he affirms it and is seeking only a construction of two sentences in the SECOND PROVISION: therefore, it is proper for the Federal Court in Sherman, Texas to construe said will, which is needed to determine whether "Ernest" or his brother, "Pharon", who predeceased "Ernest" will inherit 100% or just what percentage of "Wiley's" grandfather and grandmother's 225.1 acre homestead located near Aubrey, Texas.

"Wiley's" question No. V. (page vi. herein deals with the failure of the Trial Judge to act on "Wiley's" "Motion to Compel Answers



From Florence Iona Catlett, et al, Under Rules: 37(a), 37(d), 33, and 26" which was file marked, August 21, 1989 by the clerk, Beverly Hudgens before Judge Brown signed his "ORDER on August 22, 1989. (See APPENDIX "C", App. 5 & 6.).

On March 27, 1989, "Wiley" mailed interrogatories to "LIVELY" Attorney for "FLO" and she returned her set: "Refused Return to Sender". She failed to reply, so on 4-14-89 and 7-20-89, "Wiley" wrote to "LIVELY" asking for his help. When "Lively" never replied, "Wiley" mailed on 8-18-89 his "Motion to Compel Answers from "FLO" Under Rules 37(a), 37(d), 33, and 26""; however, to date she has not answered the questions filed 8-21-89.

Then, just one day later, 8-22-89, Judge Brown filed his ORDER denying several of "Wiley's motions; however, he ignored "Wiley's "Motion to Compel Answers from "FLO" . . . " Therefore, J. Brown did ERR.



ADAMS v. EPSTEIN, Tex.Civ.App. - Waco, 1934, 77 S.W.2d 545 at p.546 where Chief Justice Gallagher said: "The announced rule is inapplicable here because there was no attempt to dispose of appellee's plea of privilege. Such plea was simply IGNORED and judgment rendered as though it had never been filed. The Court was without jurisdiction to render such judgment, and the same was therefore void."; BOYD v. GILLMAN, Tex.Civ.App.Ct. 1969, 447 S.W.2d 759 at p. 763."

By a long series of decisions The U. S. Supreme Court in MARKHAM v. ALLEN (1945) 326 US 490, 90 L.Ed. 256,,261, 66 S.Ct. 296 at 259 (L.Ed.) said: "it has been established that federal courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, and heirs and other claimants against a decedent's estate "to establish their claims" so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. WATERMAN v. CANAL-LOUISIANA BANK & T. CO. 215 US 33, 43, 54 L.Ed. 80, 84, 30 S.Ct. 10 and cases cited."

And on p.257 the MARKHAM court also said: "This suit is not a probate proceeding (nor is the instant case) but a declaration of the custodian's interest in the estate. BYERS v. McAULEY, 149 US 608, 37 L.Ed. 867, 13 S.Ct. 906."



"DUE PROCESS OF LAW" is QUESTION NO. VI.

On May 10, 1983, by order of Probate Judge Burnett (APPENDIX "O", App. 46 thru 49) on motions of "FLO", "Wiley" was removed - without jus cause - from his father's estate. Said order being void as impossible of performance; since there was no letter from an officer of the State of Texas stating that the inheritance taxes had been paid or that none was owed. Ex parte Mason Tex.Civ.App. 1979, 584 S.W.2d 936 at 937, "An order impossible of performance is void." ; Ex parte Mabry, 122 TEX. 54, 52 S.W.2d 74."

On May 24, 1983, "Wiley's" attorney of record, William L. Smith, Jr. of Denton, Tx. wrote letters to the Tarrant County, Texas Probate Clerk and one to the Successor Administratrix of "Ernest's Estate" requesting to be notified and heard in all proceedings therein. Neither Attorney Smith nor "Wiley" was ever notified or heard. Defendants have not denied those facts. (APPENDIX "Q", App. 57 ' 58, Claim No. 7, herein and see "Wiley's complaint, Ex. "G" and pars 97 thru 100.)

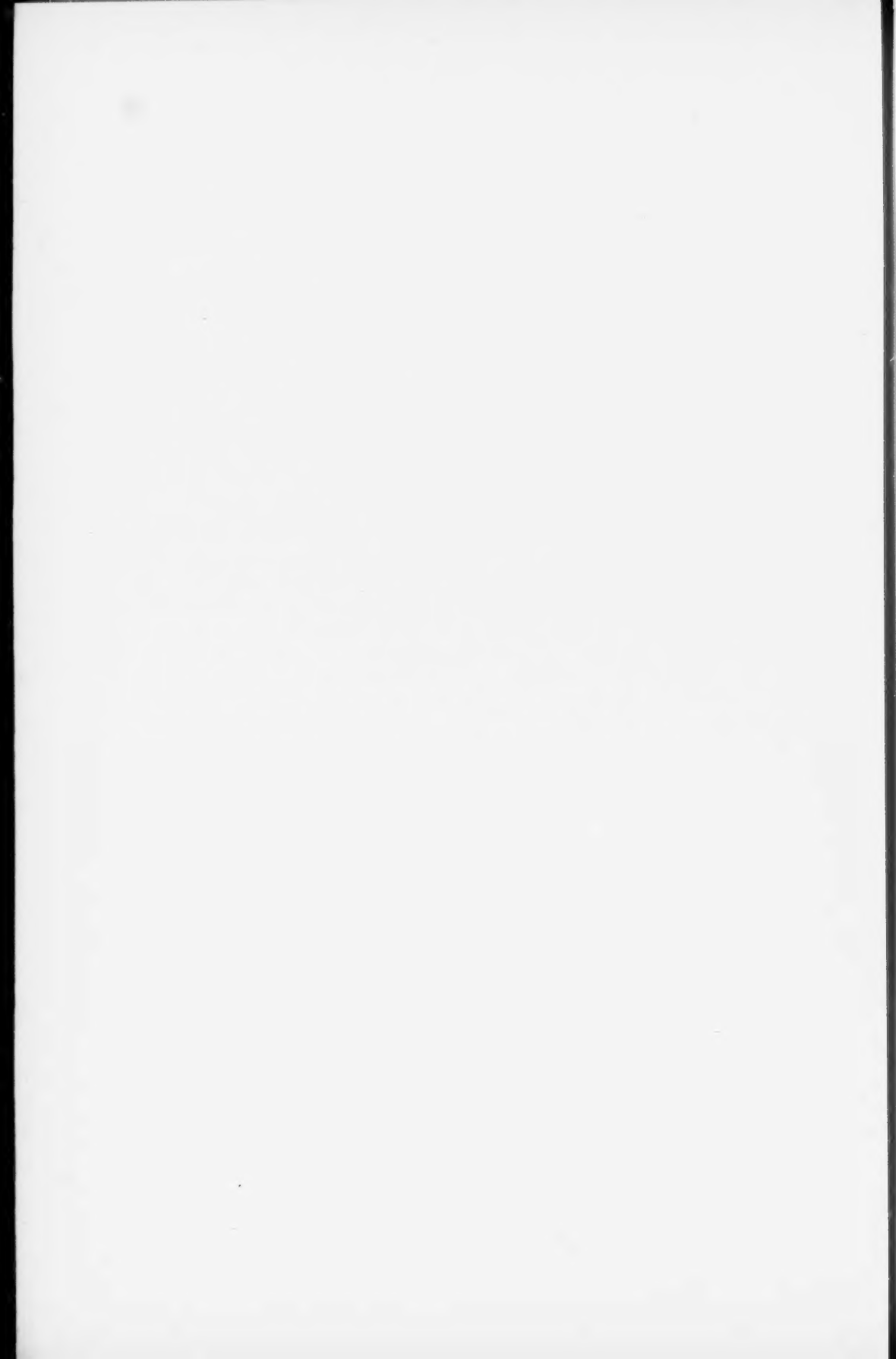


"Wiley" is the sole heir of his father; therefore, an interested party, (V.A.T.S., Probate Code, Section 3(r)).

Any and all property under the control of the Probate Court No. 1, Cause No. 77-2726, Tarrant County, Tx., really belongs to its sole heir, "Wiley". (V.A.T.S., Probate Code, Sect. 37; In Texas, the heirs are the real owners of the real property upon the death of their ancestor; BRUNSON v. BRUNSON, 1963, (CA 7th Dist.) 372 S.W.2d 761, writ, dism.w.o.j.; Whether property passes under will or by descent and distribution, title vests immediately on death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959, CA Dist.) 328 S.W.2d 783, writ, ref.n.r.e.; KITTREDGE v. RACE, 1875, U.S. Supreme Court, 92 US 116, 23 L.Ed. 488, 490."

The Certificate of Service in the following Applications in Cause No. 77-2726, "Wiley father's estate proves that neither he nor Attorney William L. Smith, Jr. received any notice or hearing on those Applications which would make them comply under "due process of law" where they are requesting action on "Wiley's" real property.

(1) - FILED: 1-12-84, "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY."



(2) - FILED: 3-22-84, "APPLICATION FOR PAYMENT OF EXPENSES OF ADMINISTRATION."

(3) - FILED: 3-22-84, "APPLICATION TO DISCHARGE PERSONAL REPRESENTATIVE AND APPOINT A SUCCESSOR ADMINISTRATOR."

(4) - FILED: 6-18-84, "MOTION FOR AUTHORITY TO SELL REAL PROPERTY."

(5) - FILED: 11-26-84, "APPLICATION FOR ORDER TO PAY CLAIMS."

(6) - FILED: 2-11-85, "APPLICATION BY SUCCESSOR ADMINISTRATOR FOR PAYMENT OF FEES AND COSTS."

(7) - FILED: 1-25-85, "AUTHENTICATED CLAIM OF JOHN R. LIVELY" - \$42,228.00 - AGAINST "THIS ESTATE" (Not a legal entity).

SONUS CORP v. MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD (U.S.Dist.Ct.D.MASS, 1974) 61 F.R.D. 644, 18 FR Serv.2d 354 at 649, where Senior District Judge JULIAN said: "However, failure to give any notice to the plaintiff of the application for judgment by default, which application was granted, raises a question of due process. See e.g. SNIADACE v. FAMILY FINANCE CORP., 395 US 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); MULLANE v. CENTRAL HANOVER TRUST CO., 339 US 306, 334 70 S.Ct. 652, 94 L.Ed. 865 (1950)

Tom J.Fouts a defaulted defendant was

never served with a copy of Judge Brown's

ORDER, FILED 4-18-89 (APPENDIX "A", App1 1 nor the 4-18-89 MEMORANDUM OPINION (APPENDIX "B", App. 2 & 3) nor did attorney C. H. Gillespi, III, attorney of record for the Federal Land Bank of Texas.



SONUS CORP. v. MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD. (1972 D.C.MASS) Supra at 648, ". . . no copy was served on the plaintiff corporation. Failure to serve motion upon plaintiff constituted a violation of F.R.Civ. P., 5 and 55(b)(2). In Ken-Mar Airpack, Inc. v. Toth Aircraft & Accessories Co. 12 F.R.D, 399 (W.D.Mo.1952), neither the judgment nor the files showed that the defendant who had been defaulted, had received notice in compliance with F.R.Civ.P. 55(b)(2). The court found, "there was a failure of due process and the judgment is a nullity."

Therefore, it is important to note that those proceedings of Probate Judge Burnett and his Successor Administrator, "RICHARDS" were not probate court proceedings, as such, in that they were selling "Wiley's" land (V.A.T.S., ProbC, Sect. 37) without any notice or hearing to "Wiley" and that "Wiley" is alive. This case at this point, in truth, was not one within their jurisdiction. SCOTT v. McNEAL, 1893, 154 US 34, 14 S.Ct. 1108, 1112, 38 L.Ed. 896 at 901 where Justice Gray said: "No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party."

Judge Burnett and "RICHARDS" acting under the authority of the State of Texas did act to deprive "Wiley", a nonresident of the State of Texas, of his property without due process of law under the 5th & 14th Amendments of the



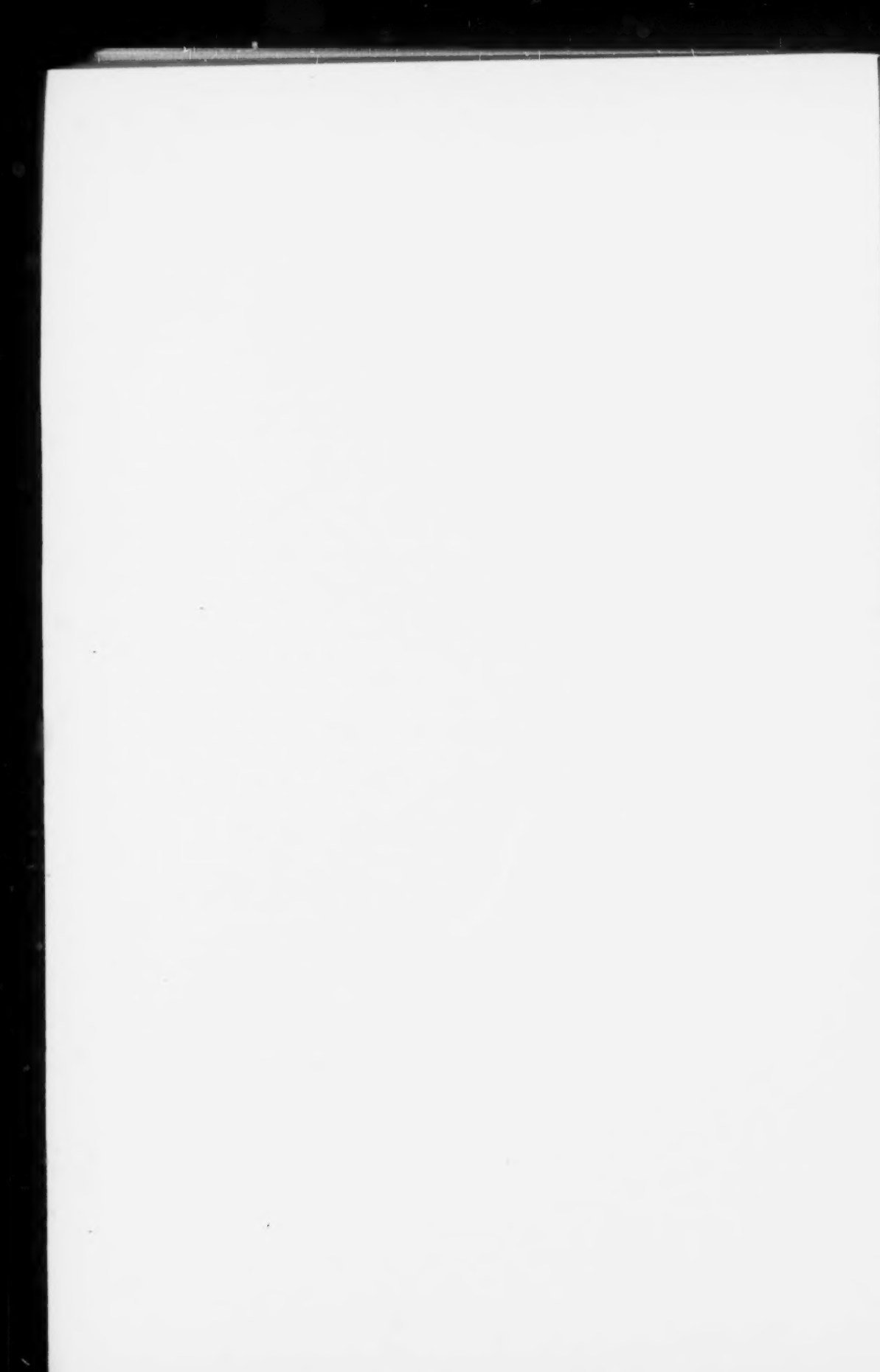
Constitution of the United States. Const. Amend. Vth & XIVth, Sect I (APPENDIX "X", App. 82.)

Justice STEWART said in FUENTES v. SHEVIN (1972) 407 US 67, 32 L.Ed.2d 556, 92 S.Ct. 1983, rehden. 409 US 902, 34 L.Ed.2d 165, 93 S.Ct. 177, 180 at 569; "(3,4) For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." (cites omitted) at p. 570 he also said: "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented."

Conclusion: "Wiley's" complaint does have subject matter jurisdiction under Federal Question, 28 U.S.C., 1331. Hence, Judge Brown did ERR in his dismissal without any particular rule stated. And he mislead "Wiley" with his incomplete or partial quote of HISHON, supra (APPENDIX "A" & "B", App. 1 thru 4 and see page 37 herein for his quote & the full quote from CONLEY v. GIBSON, supra,

Professor Moore states: "2A Moore's Fed. Prac. (2nd.Ed.-1985), Par. 12.07, p. 12.50, "Dismissal, may not be granted until the party asserting jurisdiction is permitted an opportunity to demonstrate that jurisdiction exists. Reasonable discovery for this purpose should be allowed, and failure to permit such discovery is usually treated as reversible error."

The Supreme Court has enunciated a strict



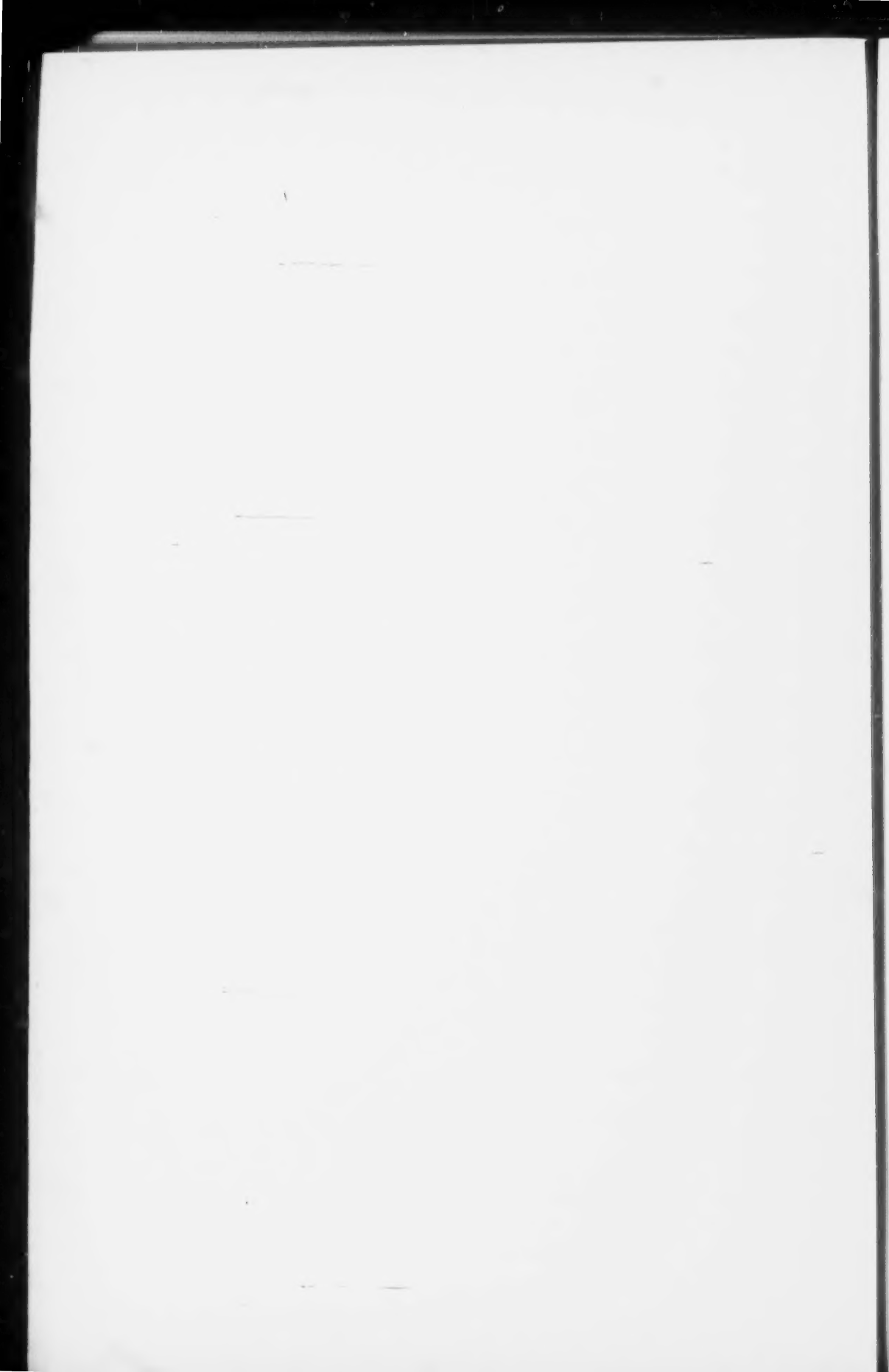
standards for dismissals for lack of subject matter jurisdiction when the basis of jurisdiction is also an element in the plaintiff's federal cause of action. In *BELL v. HOOD*, 327 US 678, 66 S.Ct. 774, 90 L.Ed. 939 (1945) an implied right of action under the 4th & 5th Amend. of the U.S.Const." at p. 415 in *WILLIAMSON v. TUCKER* (CA5th - 1981) 645 F2d 404, cert. denied (1981) 454 US 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (Court must permit the plaintiff an opportunity for discovery to demonstrate jurisdiction.)

"ERNEST'S ESTATE" HAS NO FUNDS

Therefore, "Ernest's Estate" can't buy anything from "FLO". The question is how will "FLO" transfer part of the Aubrey, Texas Farm to the estate?

"The District Court shall have \* \* \* Jurisdiction \* \* \* of all suits for trial of title to land \* \* \*, " V.A.T.S., art. V., Sec. 8, Texas Constitution. And Sec. 16 of the Texas Constitution which provides that the county court "shall not have jurisdiction of suits for the recover of land." *FARLEY v. DORSEY*, TEX.SUP.CT., 135 S.W.2d 89 at 90.

"FLO'S" partition action is still "pending" and in trouble in that she also failed to name all of the necessary parties. (*V.A.T.S., art. 1982; LOWMAN v. FALSETTI* (CA5th-1964) 335 F2d 632, cert.denied 85 S.Ct.659, 379 US 966, 13 L.Ed.2d 560 - mandatory)



The FIFTH CIRCUIT in LOWMAN v. FALSETTI, supra, at p.638 states that "NOTICE" is an important objective under art.1982,V.A.T.S.

Yet, they proceeded to use those contractual devices (the "DEEDS" #47175 & #47176, of 9-8-83, Real Property Records, Tarrant County, Tx. - the land is in Denton County, Tx. - from Florence Iona Catlett (defendant herein) to Successor Administrix, Exhibits "E", pages 1,2,3,& 4 in "RICHARDS" "Motion to Dismiss" in the Federal District Court (S-87-83-CA) to circumvent public policy and the district court of Texas, Denton County, which has exclusive jurisdiction to partition land located in Denton County, as between a living cotenant "FLO" who is adverse to "ERNEST'S ESTATE", and his estate. CARTWRIGHT v. MINTON (Tex.Civ.App. 1959) 318 S.W.2d 449 RNRE at 454, "As a matter of principle it is necessary to weigh the advantages of certainty in contractual relations against the harm and injustice that result from fraud . . . . The same public policy that in general sanctions the avoidance of a promise obtained by deceit strikes down all attempts to circumvent that policy by means of contractual devices. BATES v. SOUTHGATE, 308 Mass 170, 31 N.W.2d 551, 556, 133 A.L.R. 1349 quoted with approval by our Supreme Court. "

And all without any notice or hearing to the sole heir, M. Wiley Catlett, from the Probate Court Clerk or from "RICHARDS".



"FLO'S" PARTITION ACTION IN DENTON COUNTY, TX

On December 3, 1981, Florence Iona Catlett filed her partition action in the 158th District Court, Denton County, Texas, Cause No. 81-8158-B against M. Wiley Catlett, Administrator of the Estate of Ernest Luther Catlett, Deceased and R. David Broiles, Attorney at Law, (former attorney of the Estate) and the law firm of Brown, Herman, Scott, Dean & Miles a partnership. "FLO'S" Exhibit "A" therein was the AGREED JUDGMENT, 9-15-81, No. 236-39718-76 Tarrant County, Tx., 236th D.C. (Plaintiff's Exhibit "F" and her Partition action is Plaintiff's Exhibit "D" in "Wiley's" complaint No. S-87-83-CA filed 4-16-87)

"Flo" was seeking to partition the "AUBREY, TEXAS FARM" of an unknown description, see her Item II. "The exact quantity of real property of which the five tracts consists is unknown." "Wiley" will show (Question No. VIII - Void Judgments, etc.) that said AGREED JUDGMENT is null and void for the insufficient description of the land described therein and because of extrinsic fraud and also Rule 60(b) (5).



"FLO" was to receive 5/6th and the estate  
1/6th; however, in "FLO'S" partition action

Item IV she has the farm divided in this way:

5/6 th - Florence Iona Catlett  
2/15 th - Ernest's Estate  
1/30 th - R. David Broiles & Law Firm  
Brown Herman Scott Dean & Miles

On October 4, 1982, Judge Narsutis signed  
his "ORDER FOR SANCTIONS AND DEFAULT INTER-  
LOCUTORY JUDGMENT ORDERING PARTITION  
AND APPOINTING COMMISSIONERS" in which  
"Lively" inserted the same void descriptions.  
It appointed Tom J. Fouts, Realter & a def-  
endant in "Wiley's" complaint in the Federal  
Court and Realtor, Pat Wilson who on 4-6-81  
made "FLO" and offer on the farm of \$3,000  
per acre - see CLAIM I herein and J. A. Hin-  
sley as commissioners. Surveyor J. C. Green  
of SCHOELL, FIELD & ASSOC., INC., Denton, Tx.  
(That Narsutis 10-4-82 ORDER is APPENDIX "M"  
App. 29 thru 38) This ORDER has the same  
description of the farm in it which "Lively"  
inserted in the AGREED JUDGMENT (Pl.Ex. "F")

On October 14, 1982, Judge Narsutis signed  
two other judgments; ORDER FOR CORRECTION OF



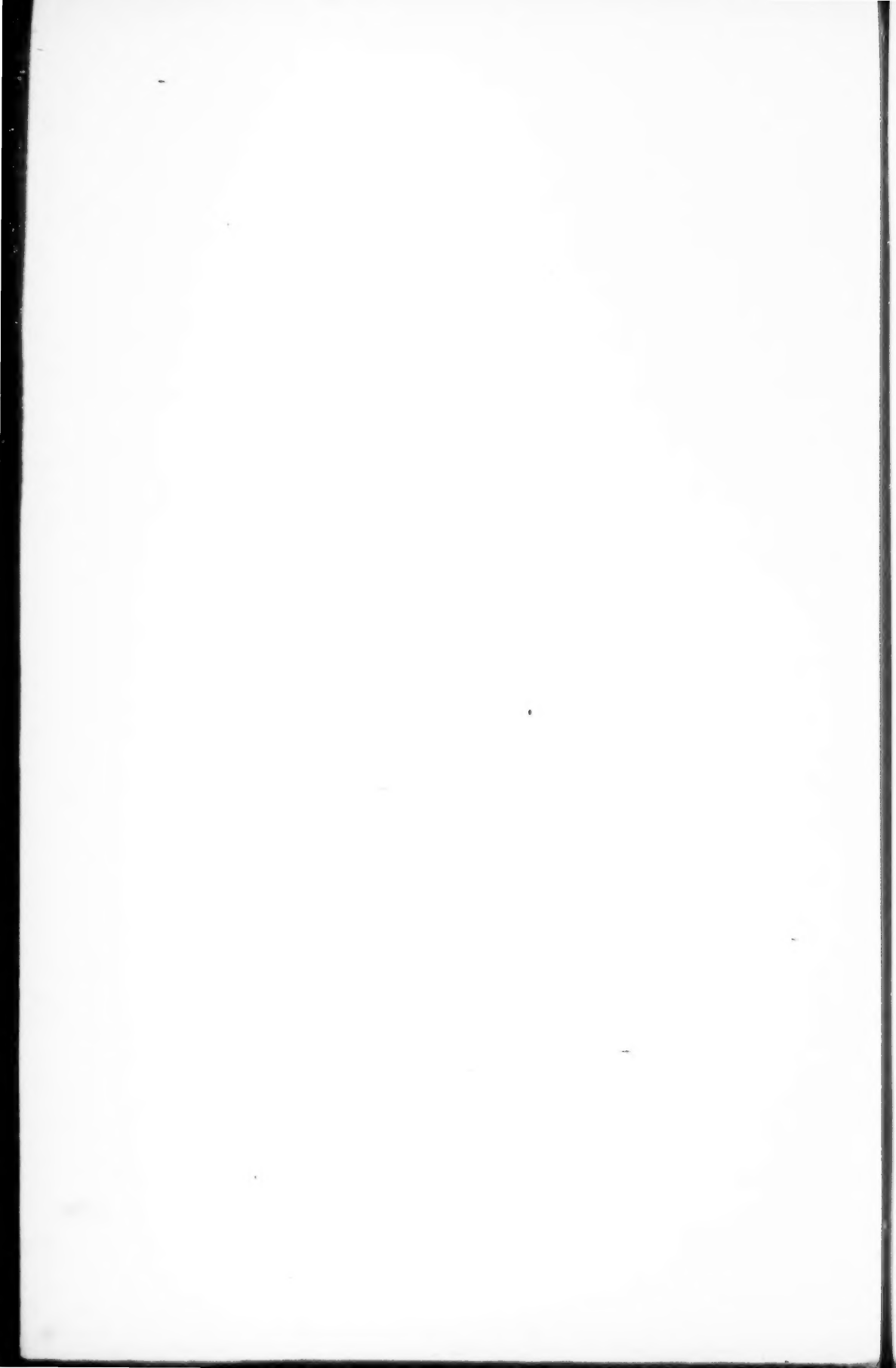
MISTAKES IN INTERLOCUTORY JUDGMENT AND WRIT OF PARTITION" and another "INTERLOCUTORY ORDER" (APPENDIX "N", App. 39 thru 45)

On May 18, 1983, the Fort Worth, Tx. Appellate Court, No. 2-82-212-CV(#81-8158-B below)

REVERSED and REMANDED all three Judge Narsutis JUDGMENTS, October 4-14-14-82 in "Flo's" partition action in Denton County with costs against Flo. (APPENDIX "P", App. 50 thru 56). Unpublished OPINION

That OPINION of the appellate court of May 18, 1983 shoots down all three Narsutis Judgments; therefore, there has been no legal partition of the Aubrey, Texas Farm. Hence, no one knows just what particular portion (if not all) of that farm belongs to Ernest's Estate and his sole heir, "Wiley". The Probate Court in the instant case has no power to partition that farm. "Probate Court is without jurisdiction to partition land jointly owned by decedent and living cotenant, inasmuch as cotenant's interest was never part of decedent's estate." *Pmberton v. Leatherwood* (CA) 219 S.W. 2d 490, reh. den. err ref."

That is exactly the situation in the instant case between "FLO" and the estate. (RS, art. 6083) *JOHNSON v. COLT* (CA) 48 S.W.2d 397 .



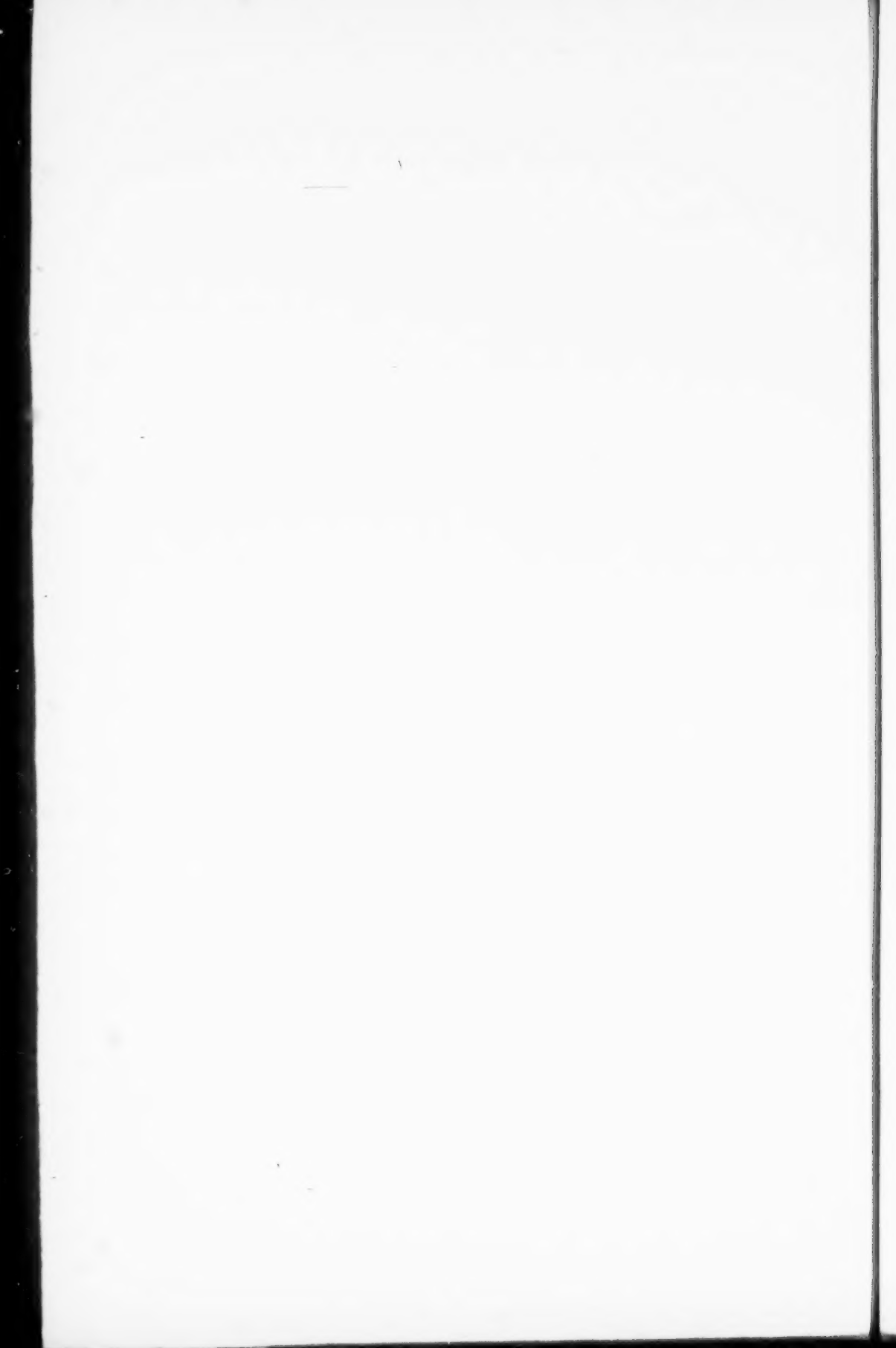
Surveyor Green failed to "honor" the descriptions in Judge Narsutis' 10-4-82 judgment; hence it went down with the appellate court's May 18, 1983 OPINION (APPENDIX "P", App. 50 thru 56). He could not follow those "LIVELY" descriptions so he surveyed what was "fenced-in". Further proving the insufficiency of the descriptions in the judgments.

The following shows Surveyor Green's division according to the shares in Narsutis' judgment of October 4, 1982.

170.185 - Acres to "FLO" (5/6 th)  
 31.200 - Acres to "Ernest's Estate (2/15 th)  
 7.800 - Acres to "The Law Firm" (1/30 th)  
209.185 Total

The following acreage figures are from the Real Estate Tax and those descriptions in the AGREED JUDGMENT, 9-15-81 and NARSUTIS' Judgment, 10-4-82 from "LIVELY'S" descriptions:

| Tract  | From<br>R.E.Tax<br>Records<br>Acres | Agreed<br>Judgment<br>9-15-81<br>Acres | Narsutis<br>Judgment<br>10-4-82<br>Acres |
|--------|-------------------------------------|--|--|
| First  | 80.0                                | 77.93                                  | 77.93                                    |
| Second | 14.6                                | 14.6                                   | 14.6                                     |
| Third  | 54.5                                | 54.5                                   | 54.5                                     |
| Fourth | 54.0                                | 54.0                                   | 54.0                                     |
| Fifth  | 22.0                                | 70.78                                  | 70.78                                    |
| Total  | 225.1                               | 271.81                                 | 271.81                                   |



"Wiley's" Question No. VIII. (page xi  
herein) deals with that fact that for many  
sound reasons several ORDERS and JUDGMENTS  
are void and null under Texas Law. In a  
 diversity action, State Law controls. ERIE R.  
CO. v. TOMPKINS, 304 US 64 (1938).

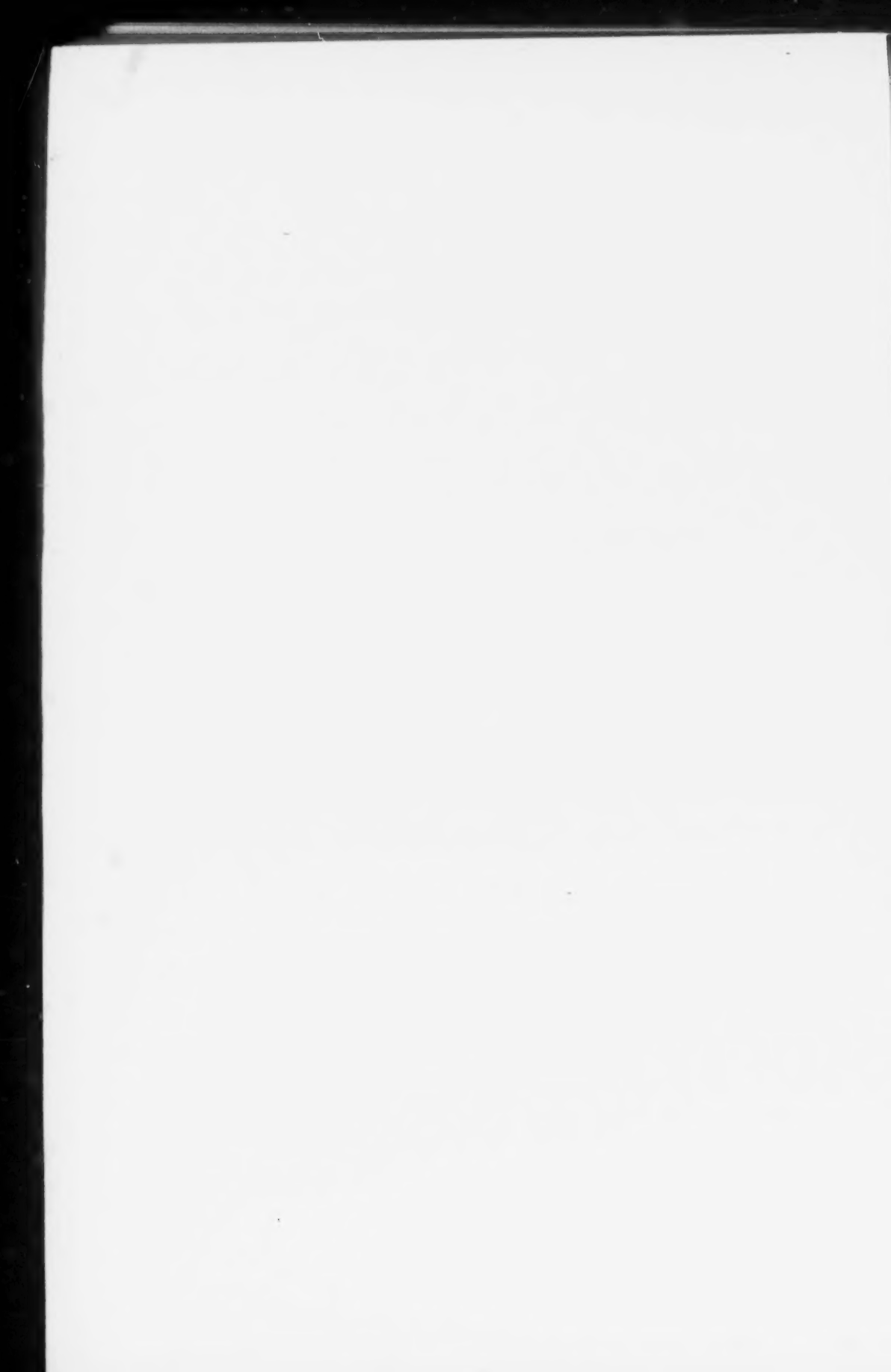
EXAMPLE NO. 1 - May 14, 1981,

"ORDER CONFIRMING SETTLEMENT", Probate Court  
 No. 1, Tarrant County, Tx., No. 77-2726, In Re:  
 The Estate of Ernest Luther Catlett, Deceased  
 is null and void for the following reasons:

Reason a: That ORDER contains no description  
 of the land to be conveyed (really owned by

"Wiley", V.A.T.S., ProbC., Sec. 37). The

authority for the need of such is: HARRIS v.  
 SHAFER, 86 Tex. 314, 23 S.W. 979 (1893), "We  
 hold that the description given in the Order  
 Confirmation and in the deed is wholly insuf-  
 ficient and in fact no description, furnish-  
 ing no means by which the land intended to  
 be conveyed can be located at any particular  
 place in the survey. The sale is therefore  
 void." (See APPENDIX "L", App. 26 thru 28



Reason b: Judge Burnett, Probate Court No. 1 in that case No. 77-2726 HELD hearings on May 13-14, 1981 on Plaintiff's ("Wiley's") "APPLICATION to APPROVE SETTLEMENT (See STATEMENT OF FACTS by Peggy Ramsey, Official Court Reporter, Tarrant County Probate Court No. 1, Fort Worth, Texas 76102, on May 13, 1981 & May 14, 1981 which states: "BE IT REMEMBERED that on the 13th day of May, 1981, the Petitioner, M. WILEY CATLETT as ADMINISTRATOR of the Estate of Ernest Luther Catlett, Dec'd.) not being present or represented by counsel . . . For the Petitioner: None

For the Respondent:  
John R. Lively  
Attorney at Law

held hearings on May 13-14, 1981 on Plaintiff's (Petitioner's) "APPLICATION to APPROVE SETTLEMENT" (APPENDIX "K" & "L", App. 26 thru 28 and he then rendered judgment on the "merits" without anyone present for the plaintiff. Plaintiff was in Highland Park, Ill. and Judge Burnett knew it and former attorney



for "the estate", R. David Broiles, had quit. And Broiles stated so in a letter dated May 1, 1981. Therefore, under those circumstances the Texas Supreme Court has HELD: that the May 14, 1981 "ORDER CONFIRMING SETTLEMENT" of Judge Burnett is void.

FREEMAN v. FREEMAN, 160 Tex. 148, 327 S.W.2d 428 (1959) at 431 where The Supreme Court said: "(3,4) The law of this state does not authorize a defendant to take a default judgment which adjudicates against the plaintiff the merits of his suit. The cases supporting that proposition are legion. BURGER v. YOUNG, 78 Tex. 658, 15 S.W. 107; (long list of cites omitted ); EVONS v. WINKLER, Tex.Civ.App.1965, 388 S.W.2d 265 RNRE, at 268-9, "Default judgment taken by defendant which adjudicates against plaintiff merits of plaintiff's suit is void." ; LUM v. LACY, T.C.A.(1981), 616 S.W.2d 260 n.w.h. at 261"(2,4) . . . It is fundamental error to render judgment on merits on a non-appearing plaintiff; PRINCE v. PEURIFOY, T.C.A., 396 S.W.2d 913, at 916" (See also Plaintiff's Ex. "B" in complaint, "Lively's" letter of Dec. 16, 1980 to R. David Broiles)

There was no description in Attorney Broiles' "Motion to Approve Settlement" of 12-22-80. Therefore void under the Statute of Frauds, V.A.T.S., Bus. & C., Sec. 26.01.

Since that May 14, 1981, "ORDER CONFIRMING SETTLEMENT" is void; therefore the re-



sulting and dependent AGREED or CONSENT JUDGMENT of Judge White, Jr. of the 236th District Court, Tarrant County, Texas, No. 236-39718-76 is likewise void; COMET ALUMINUM COMPANY v. Judge DIRBEL, 1979, TEX.SUP. CT., 450 S.W.2d 56 at 59 "(5) . . . Therefore the nunc pro tunc judgment of 3-3-69 purporting to eliminate as clerical error was void; and the subsequent judgment of 3-28-69 granting Levine a new trial is likewise void." BROWNING v. WEST, T.C.A., 1977, 557 S.W.2d 848 at 851 ref n.r.e.

EXAMPLE NO. 2 - September 15, 1981, AGREED JUDGMENT, 236th District Court, Tarrant County, Tx., No. 236-39718-76 is null & void for the following reasons:

Reason a: The description which "LIVELY" placed therein is insufficient; therefore, same is void & null. (See Plaintiff's Ex. "J" with its Exhibits "1" thru "6" therein shown on pages C of A, 4 & 5 with the calculations and figures shown on page 18 F C of that Ex. "J", Fed.R.CivProc., Rule 10(c), See also Attorney "LIVELY'S" letter to "BROILES" dated Dec. 16, 1980, Exhibit "B" in Complaint.)

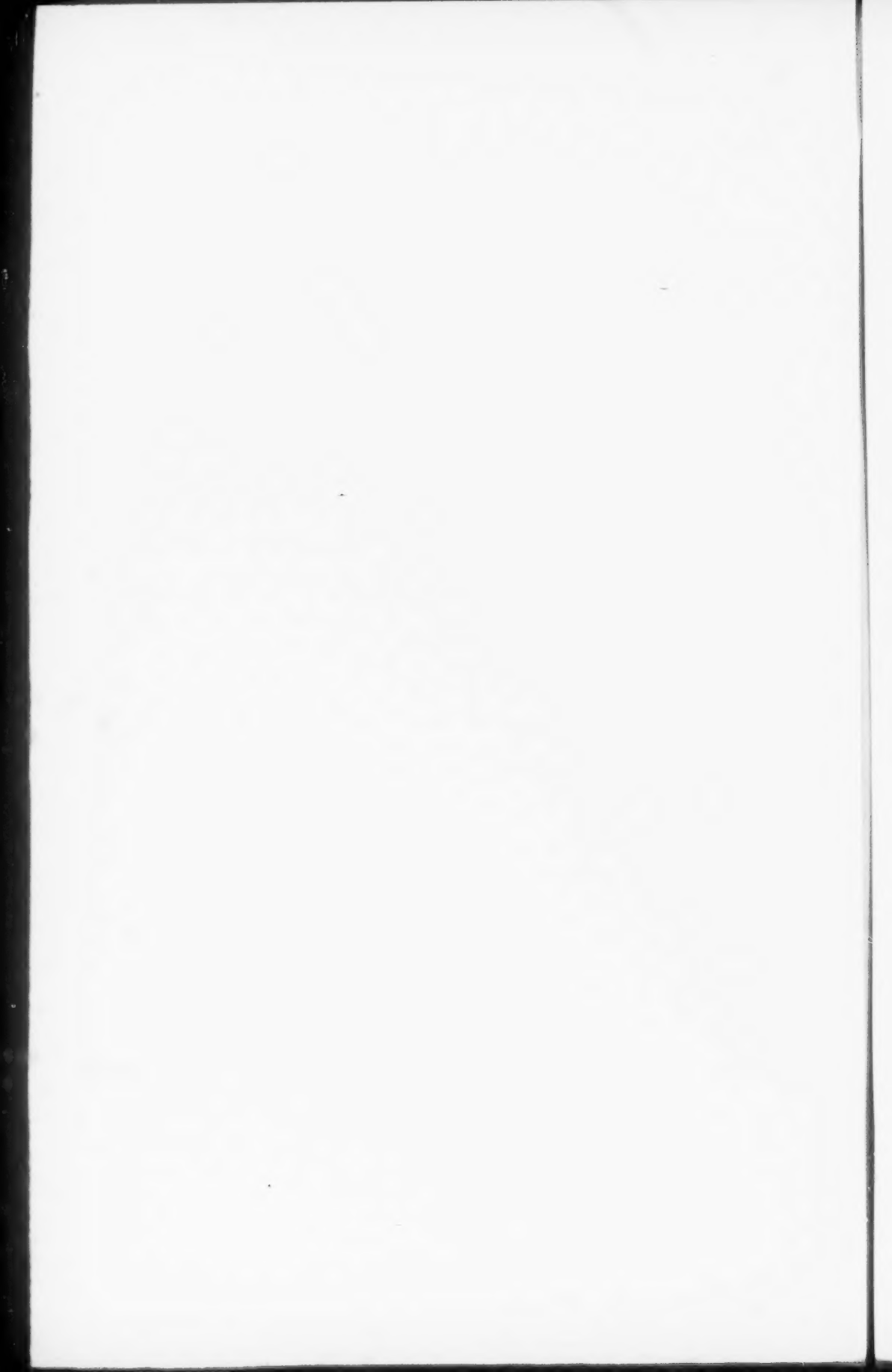


Reason b: NEW EVIDENCE, pursuant to F.R.C.P. Rule 60(b)(3) and 60(B)(4) VOID JUDGMENTS which "Wiley" found is very compelling. It is that on April 14, 1884 James Catlett and wife SOLD about 28 acres, PART of the FIFTH TRACT of the "AUBREY, TEXAS FARM" to J. C. POWLEDGE. recorded in the deed records, Denton County, Tx., vol. 29, p. 9 (Exhibit "6" in Plaintiff's Ex. "J" in his complaint)

The construction of property descriptions in deeds or judgments is a question of law. 19 Tex.Jur.2d DEEDS, Sect. 123, P. 423; KINGSTON v. PICKINGS, 46 Tex. 99, at 101, The construction of a deed, being a matter of law, is for the court." COX v. HART, 145 US 376, 36 L.Ed. 741, 12 S.Ct. 962. See THOMPSON v. BRACKEN, T.C.A., Dallas, 1936, 93 S.W.2d 614, writ, ref. n. r. e., at p. 616

"Again it must be said the judgment is void for want of certainty . . . for the reason that it could not be located on the ground." HATTON v. BURGESS, 1943, 167 S.W.2d 260, w. r. w m., T.C.A., AT

WHITE v. HIDALGO COUNTY WATER IMPROVEMENT DIST. NO.2, (Tex.Civ.App. 1928, 6 S.W.2d 790 at 791 . . . It is futile to contend that a void judgment is res adjudicata as to anything . . . but they could not by any acts . . . lose the right to assail a void judgment, for it is an outlaw that any one may attack whenever the occasion offers." ; GREER v. GREER, 1946, 144 Tex. 528, 191 S.W.2d 848 at 849-850



Reason c: Further, said May 14, 1981, "ORDER CONFIRMING SETTLEMENT" (p. 53 herein, Example No. 1 and Example No. 2., p. 56, Sept. 15, 1981 AGREED JUDGMENT are also void and null by reason of extrinsic fraud committed by "FLO" and "LIVELY" on 11-20-80 and only by reasons of which fraud was "Wiley" induced to enter the settlement-agreement.

Specifically, on 11-20-80 attorney Broiles (The Estate's former attorney) told the Administrator ("Wiley") that "Lively" had told him (Broiles) during the negotiations in the morning while in the judges chambers with "Lively" & Wilson for "FLO" and Trickey for the bank that they "FLO" and "LIVELY" had something very damaging to "The Estate's" case without telling Broiles just what it was.

Broiles was upset and recommended settling. "Wiley" as the Administrator of his father's estate after his death on 6-1-77 (he had been his guardian in Cause No. 76-1182, Probate Court, No. 1, Tarrant County, Tx. of his father by appointment of Judge R. M. Burnett on August 10, 1975) relying on Broiles superior



of Texas law - 25 Tex.Jur.2d, Fraud & Deceit, Sect. 38 - "Wiley" agreed and suffered loss and damages thereby. "Wiley" never fully understood the complex term of said agreement nor did "Broiles" properly inform him. Several major item were not even in the settlement-agreement; however, "Lively" included beneficial items - thereby changing the agreement - which "Wiley" later learned was not proper. WYSS v. BOOKMAN, Comm'n. App.. 1921, 235 S.W. 567; EDWARDS v. GIFFORD, 137 TEX. 559, 155 S.W.2d 786 (1941) at p.569 of WYSS the court said: "Nor do we think the judgment as entered conforms even to the agreement which the trial judge recited the parties to have made in open court . . . we think it is clear that the court would be entirely without authority to render any judgment other than that falling strictly within the terms of the stipulations . . . "

None of the attorneys, including Broiles and least of all "Wiley" knew Texas law regarding settlement-agreements. BURNAMAN v. HEATON, 1951, 150 TEX. 333, 240 S.W.2d 288 at 291 where Justice Smith said: " A valid consent judgment cannot be rendered by a court when consent of one of the parties thereto is wanting. It is not sufficient to support the judgment that a party's consent thereto may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court." "Wiley" had withdrawn his consent and all knew it



On 1-23-81, Broiles wrote to "Wiley" in Illinois and said: " . . . the primary pressure came from an unknown document which they claimed was going to have some great impact on the trial . . . " Later on we learned that "Lively's" claim was a sham and the document was a will of "Ernest's" handwritten not by him but by "FLO" which alleged will was without any merit at all.

Texas law provides as follows: "Actionable fraud in this state with regard to transaction in real estate \* \* \* shall consist of either a false representation of a past or existing material fact, or \* \* \* all persons guilty of fraud, as defined by this act, shall be liable to the person defrauded for all actual damages \* \* \* All persons making the false representations \* \* \* shall be jointly and severally liable in actual damages, and in addition thereto all persons knowingly and willfully making such false representations \* \* \* shall be liable in exemplary damages." RS of Texas, 1925, art. 4004. at p. 473 in VREDENBURGH v. BACHMAN (CA5th - 1926) 11 F2d 473.

Further, as shown on pages 8 thru 23 herein and in "Wiley's" complaint he has suffered loss and damages as a result of RICHARDS' BREACH OF TRUST AND FRAUD AND THAT OF "LIVELY" AND HIS CLIENT "FLO".



TO THE HONORABLE JUSTICES  
OF THE SUPREME COURT OF THE UNITED STATES:

FOR THE FOLLOWING SPECIAL AND IMPORTANT REASONS  
YOU SHOULD GRANT THIS WRIT OF CERTIORARI:

REASON ONE: Because the instant decision of the Fifth Circuit Court of Appeals is contrary to the following decisions of the 5th Cir:

WILLIAMSON V. TUCKER (CA5th - 1981) 645 F2d 404, cert denied (1981) 454 US 897, 102 S.Ct. 396, 70 L.Ed.2d 212, at 415, PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC;

GARRETT v. FIRST NAT. BANK & T. CO. (CA5th - 1946) 153 F2d. 289 at 290 & 291;

REASON TWO: Because the instant decision of the 5th Cir. is contrary to the following case of the 4th Cir. on the same subject matter.

HALL v. COTTINGHAM (Dist.Ct.E.D.South Carolina - 1931) 55 F2d. 659 at 660 & 661, affirmed in COTTINGHAM v. HALL (CA4th - 1932) 664 at 665 & 666;

REASON THREE: Because the instant decision of the 5th Circuit Court of Appeals is contrary to the following cases of the Supreme Court of the United States on the same subject matter:



PAYNE v. HOOK (1868) 7 Wall 425, 74 US 425, 19 L.Ed. 260 at 260, 261 & 262 (Controlling Case);

MARKHAM v. ALLEN (1945) 326 US 490, 496 90 L.Ed. 256 at 259, 66 S.Ct. 296;

WATERMAN v. CANAL-LOUISIANA BANK & T. CO. (1909) 215 US 33, 43, 54 L.Ed. 80 at 84 & 85, 30 S.Ct. 10;

LASTLY: The most important and compelling reason why you should grant this WRIT OF CERTIORARI is because of the review which Supreme Court Justice Day made on this subject-matter in WATERMAN v. CANAL-LOUISIANA BANK & T. CO., SUPRA, at p.84: "This court has uniformly maintained the right of Federal Courts of chancery to exercise original jurisdiction (the proper diversity of citizenships existing) in favor of creditors, legatees, and heirs, to establish their claims and have a proper execution of the trust as to them. In various forms these principles have been asserted in the following, among other, cases:

Suydam v. Broadnax, 14 Pet 67, 10 L.Ed. 357; Hyde v. Stone, 20 How. 170, 175, 15 L.Ed. 874, 875; Green v. Creighton (Kendall) v. Creighton) 23 How. 90, 16 L.Ed. 419; Payne v. Hook, 7 Wall. 425, 19 L.Ed. 260; Lawrence v. Nelson, 143 US 215, 35 L.Ed. 130, 12 Sup. Ct. Rep. 440; Hayes v. Pratt, 147 US 557, 570, 37 L.Ed. 270, 284, 13 Sup.Ct.Rep. 503; Byers v. McAuley, 149 US 608, 37 L.Ed. 867, 13 Sup.Ct. Rep. 906; Ingersoll v. Coram, 211 US 335, 53 L.Ed. 208, 29 Sup.Ct.Rep. 92."

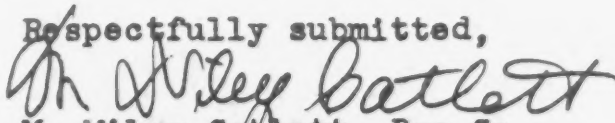


C O N C L U S I O N

I, M.Wiley Catlett, Petitioner hereto, express a belief, based on reasoned and studied judgment, that the trial court and the decisions of the FIFTH CIRCUIT COURT OF APPEALS are contrary to the afore mentioned special, important, and sound parallel cases; therefore, the Supreme Court of the United States' consideration is necessary in order to secure and maintain uniformity of decisions between the various circuit courts and the OPINIONS of the Supreme Court of the United States. Petitioner for the foregoing reasons respectfully requests this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

And we pray this in the name of justice and fairness.

Respectfully submitted,



M. Wiley Catlett, Pro Se  
1495 Sunnyside Avenue  
Highland Park, Ill. 60035  
(708) 831-3893

DATED: This \_\_\_\_ day of July, 1990.

Supreme Court, U.S.  
FILED

JUL 16 1990

JOSEPH F. SPANIOL, JR.  
CLERK

2  
~~90-105~~  
APPENDIX

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1989

M. WILEY CATLETT

Petitioner,

v.

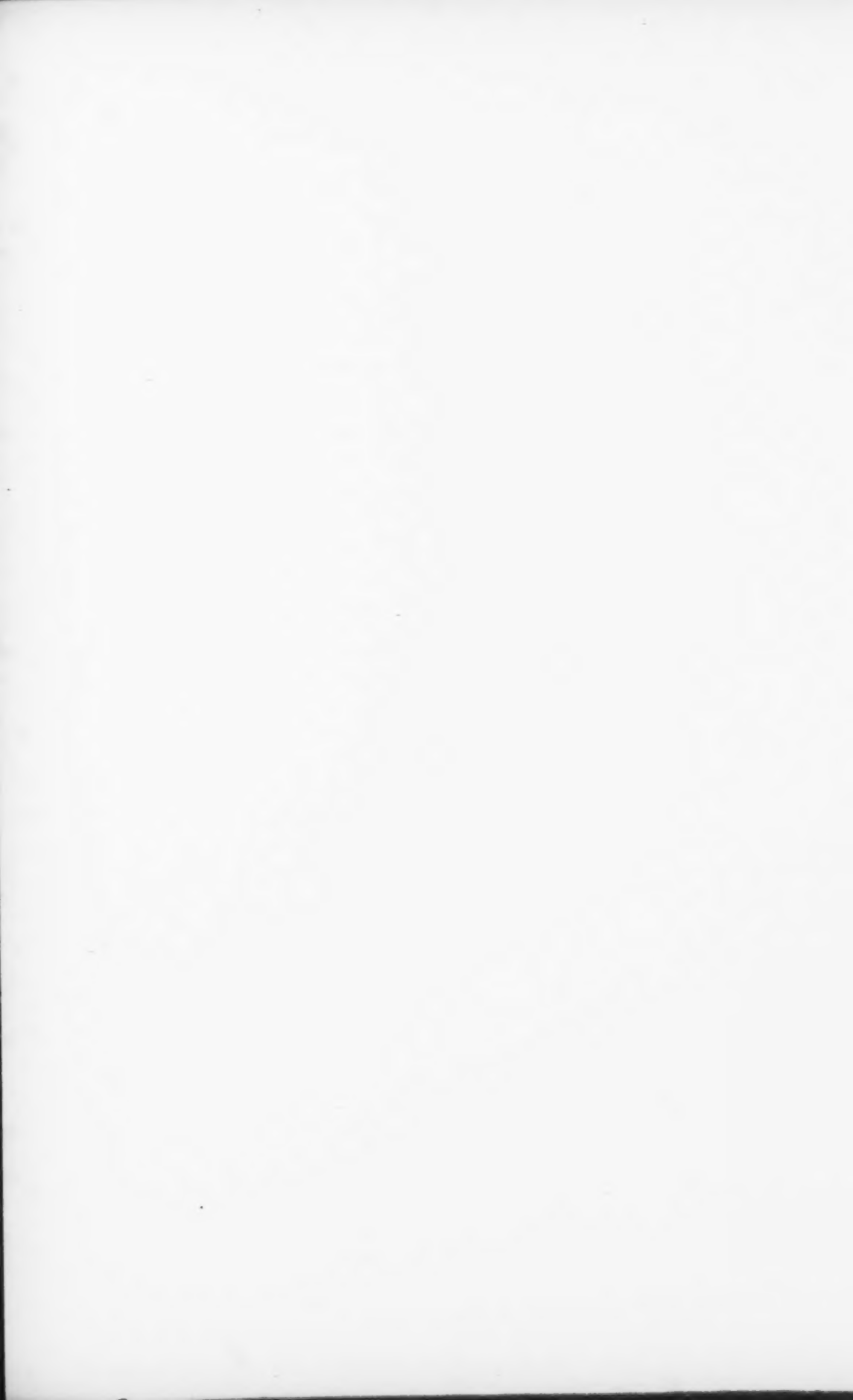
JOHN R. LIVELY,  
JOHNNY W. RICHARDS, II, INDIVIDUALLY  
AND AS SUCCESSOR ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, WESTERN SURETY COMPANY,  
AUBREY GROUP, Composed of: JOSEPH R.  
KILIANSKI, owner, DAVID J. MCGILVRAY,  
owner, SHARON L. TOLBERT, owner, L.  
M. TOLBERT, Buyer, FLORENCE IONA  
CATLETT, INDIVIDUALLY, and as INDE-  
PENDENT EXECUTRIX of the ESTATE of P.  
C. CATLETT, DECEASED and as ADMINIS-  
TRATRIX with Will Annexed to the  
ESTATE of CHARLIE CATLETT, DECEASED,  
MADRIN HUFFMAN, AS PROBATE COUNTY  
CLERK OF TARRANT COUNTY, TEXAS,  
(TOM J. FOUTS, Realtor & Commissioner  
filed notice of bankruptcy 6-16-89)

Respondents.

PETITION for WRIT of CERTIORARI to the UNITED  
STATES COURT of APPEALS for the FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, Pro Se  
1495 Sunnyside Avenue  
Highland Park, Ill. 60035  
(708) 831-3893



In The  
Supreme Court of the United States

INDEX OF EXHIBITS OF APPENDIX

| <u>Appendix<br/>Number</u> | <u>Name of Exhibit</u>  |
|----------------------------|---|
| " A "                      | April 18, 1989 - ORDER - U.S.Dist. Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DISMISSED - App.1   |
| " B "                      | April 18, 1989 - MEMORANDUM OPINION - U.S.Dist.Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DISMISSED - App. 2 thru 4   |
| " C "                      | AUGUST 22, 1989 - ORDER - U.S.Dist. Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DENIED - App.5-6   |
| " D "                      | March 14, 1990 - APPEAL - In The U.S.Ct. of Appeals For The FIFTH CIRCUIT - (No. 89-2974)(No. S-87-83-CA below) - Per Curiam: JUDGES, GEE, DAVIS and JONES, Circuit Court - AFFIRMED - App. 6   |
| " E "                      | April 26, 1990 - ON PETITION FOR REHEARING and SUGGESTION FOR REHEARING EN BANC - OPINION - CIRCUIT JUDGES, GEE, DAVIS and JONES (No. 89-2974)(No. S-87-83-CA below) Per Curiam: DENIED - U.S.Ct. of APPEALS For The FIFTH CIRCUIT - App. 8-9 |
| " E.1 "                    | April 3, 1990 - ORDER - Further extension of time for filing a petition for rehearing from April 11, 1990 is DENIED - App. 9.1 & 9.2  |



- " F "      January 24, 1968 - No. 7989 - Will  
of CHARLIE CATLETT - Provision  
SECOND - Plaintiff's Exhibit "A"  
in Complaint - Filed 9-13-74, Denton  
Co.,Tx.Req.for Const. App. 10 & 11
- " G "      December 16, 1980 - Letter from  
"LIVELY" to "BROILES" Re: 236-39718-  
76,D.C.,Tarrant Co.,Tx., Exh. "B" in  
Comp.Judg.doesn't recite description  
App. 12 thru 14
- " H "      December 17, 1980 - Letter from  
"BROILES" to Judge Burnett - Re: 77-  
2726 Est.Ernest , Application.App.15
- " I "      December 22, 1980 FILED \* #77-2726 -  
Mot. to App.Settlement" - No descrip-  
tion of land in it - App. 16 thru 19
- " J "      March 12, 1981 FILED - #77-2726 -  
"Resp. to Adm.'s Mot. to App.Settle."  
See Item II - App. 20 thru 22
- " K "      May 13, 1981 - #77-2726 - "CLAIM  
AGAINST THE ESTATE OF ERNEST LUTHER  
CATLETT, DEC'D."not a legal entity  
App. 23 thru 25
- " L "      May 14, 1981 - "ORDER CONFIRMING SET-  
TLEMENT", Prob.C.No.1, Tarrant Co.,Tx.  
#77-2726 same being void - no descrip-  
tion of land - HARRIS v SHAFER 86 Tx.  
314, 23 S.W. 979 at 980 & other reas.  
App. 26 thru 28
- " M "      October 4, 1982 - No.81-8158-B,Den-  
ton Co.,Tx.,158th D.C.J.Narsutis -  
"ORDER FOR SANCTIONS AND DEFAULT IN-  
JUDGMENT ORDERING PARTITION AND APP.  
COMM" in FLO'S" Partition action  
Failed to name all parties-insuff.  
Descrip. Void - App. 29 thru 38



- " N "      October 14, 1982 - No.81-8158-B,Den.,  
Co.,Tx. "FLO" Partition action -  
J. Narsutis' 3rd Judg. "INTERLOCUTORY  
ORDER CORRECTING ERRORS - All three  
Reversed & Remanded by May 18, 1983  
OPINION,APPENDIX "P"  
App. 39 thru 45
- " O "      May 10, 1983 - #77-2726 Prob.C.Tarr.  
Co.,Tx.- ORDER REMOVING ADMIN. M.  
WILEY CATLETT for mismanagement -  
Order void as impossible of performan  
ce.Ex.Parte Mason,T.C.A. 1979,584 S.W  
2d 936"Order impossible of perf. void  
App. 46 thru 49.
- " P "      May 18, 1983 - OPINION,Unpublished -  
No. 2-82-212-CV (#81-8158-B below)  
REVERSED & REMANDED three NARSUTIS'  
Judgments of Oct. 4-14--82 with costs  
against "FLO" - Hence, there has been  
NO LEGAL PARTITION of the land  
App. 50 thru 56
- " Q "      May 24, 1983 - Letter from Attorney  
Wm.L.Smith,Jr.of Denton,Tx.to CLERK  
& another to Suc.Adm.of Ernest's  
estate. No. 77-2726,Tarrant Co.,Tx.  
requesting to be NOTIFIED, Ex."G" in  
Comp. App. 57 & 58 - Rule 10(c)
- " R "      CIVIL DOCKET (both sides) #236-39718-  
76, 236th.D.C.,Tar .,Co.,Tx. - 9-1-76  
Judg.Signed 9-15-81 - Trial 11-17-80  
thru 11-20-80 - App. 59 thru 60
- " S "      April 16, 1987 - Pages C of A, 1,2,3,  
FC of Exh. "J" in Complaint quoting  
Charlie Catlett's SECOND PROVISION of  
his Will- Rec. for construction.  
Full "Will" Exhibit "A" in complaint.  
App. 61 thru 71 APPENDIX "S" herein
- " T "      July 26, 1976 - Letter from Dr. Walt  
L. Geyer,M.D. Re: Ernest Luther  
Catlett- incompetent - App.72-73



- " U "     March 27, 1989 - date of mailing  
              Plaintiff's "Mot.toCOMPEL ANSWERS  
              from "FLO" under 37(a),37(d),33 & 26  
              (Page 1 thereof) QUESTION V.  
              App. 74 & 75
  
- " V "     April 16, 1987 (S-87-83-CA) Federal  
              Complaint in U.D.Dist.Ct.Eastern  
              Dist.Tex.,Sherman Div.- LIST OF  
              EXHIBITS - "A" thru "J" & EXHIBITS  
              "1" thru "10" in Ex. "J" thereof  
              App. 76 thru 79
  
- " W "     February 8, 1985 - #77-2726, Prob.C.  
              #1, Tar.Co, Tx. "ORDER AUTHORIZING PAY-  
              MENT OF CLAIM \* \$41,684. "LIVELY"  
              Paid 2-8-85 App. 80 & 81
  
- " X "     THE CONSTITUTION OF THE UNITED STATES  
              ART. III., SEC.2 - App. 82  
  
              AMENDMENTS " V " & "XIV" - App. 82
  
- " Y "     January 25, 1985 - First page only of  
              "LIVELY'S" - AUTHENTICATED CLAIM OF  
              JOHN R. LIVELY " for \$42,228.00 in  
              alleged attorney's fees -Paid \$41,684  
              on 2-8-85 App. 83 & 84



EOD - 4-18-89

FILED  
4-18-89

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

v.

NO. S-87-83-CA

JOHN R. LIVELY, et al

O R D E R

For the reasons expressed in the  
MEMORANDUM OPINION filed of even date here-  
with, plaintiff's claims are dismissed for  
lack of subject matter jurisdiction.

It IS SO ORDERED.

Signed this 18th day of April, 1989.

PAUL BROWN

---

UNITED STATES DISTRICT JUDGE

Mid 4-18-89

to: Catlett  
Richards  
Lively  
Thompson

S8783. OPN--1



EOD 4-18-89

FILED  
4-18-89

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

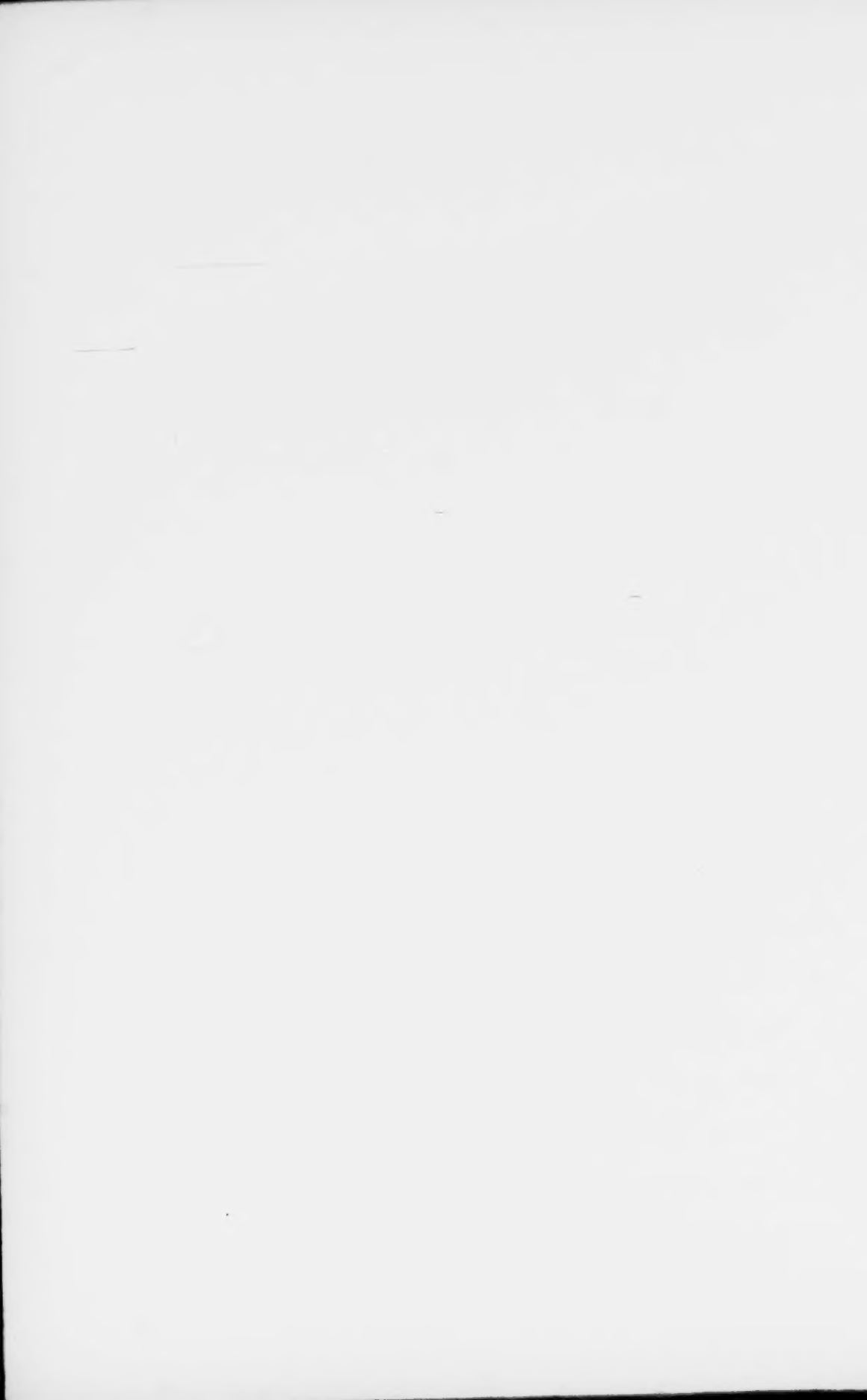
v.

No. S-87-83-CA

JOHN R. LIVELY, et al

MEMORANDUM OPINION

The Court has under consideration Motion to Dismiss Complaint filed on behalf of Federal Land Bank of Houston; Motion to Dismiss filed on behalf of Joseph R. Kilianski; Motion to Dismiss of L. M. Tolbert, Sharon L. Tolbert, David J. McGilvray, and the Aubrey Group; Motion to Dismiss filed on behalf of Florence I. Catlett; Motion to Dismiss filed on behalf of Madrin Huffman; Motion to Dismiss of Defendant Lively; and, Motion to Dismiss filed on behalf of Johnny W. Richards, II. The Court has considered these motions, and the lack of response thereto, and it is of the opinion that such motions should be granted and this action dismissed.



In considering the defendant's various motions to dismiss, the allegations in plaintiff's complaint must be taken as true and construed in a light most favorable to plaintiff. Hishon v. King & Spalding, 104 S. Ct. 2229, 2232 (1984).

It is apparent that plaintiff's complaints relate solely to orders entered in several state court proceedings. However, "lower federal courts possess no power whatever to sit in direct review of state court decisions."

Atlantic Coast Line R. Co. v. Locomotive Engineers, 90 S.Ct. 1739, 1748 (1970). All of plaintiff's present claims are inextricably intertwined with orders previously entered by state courts, and this court lacks subject matter jurisdiction to review the orders. District of Columbia Court of Appeals v. Feldman. 103 S.Ct. 1303 (1983).

Therefore, defendants' motions to dismiss should be granted. An Order has been signed



separately and simultaneously of even date herewith.

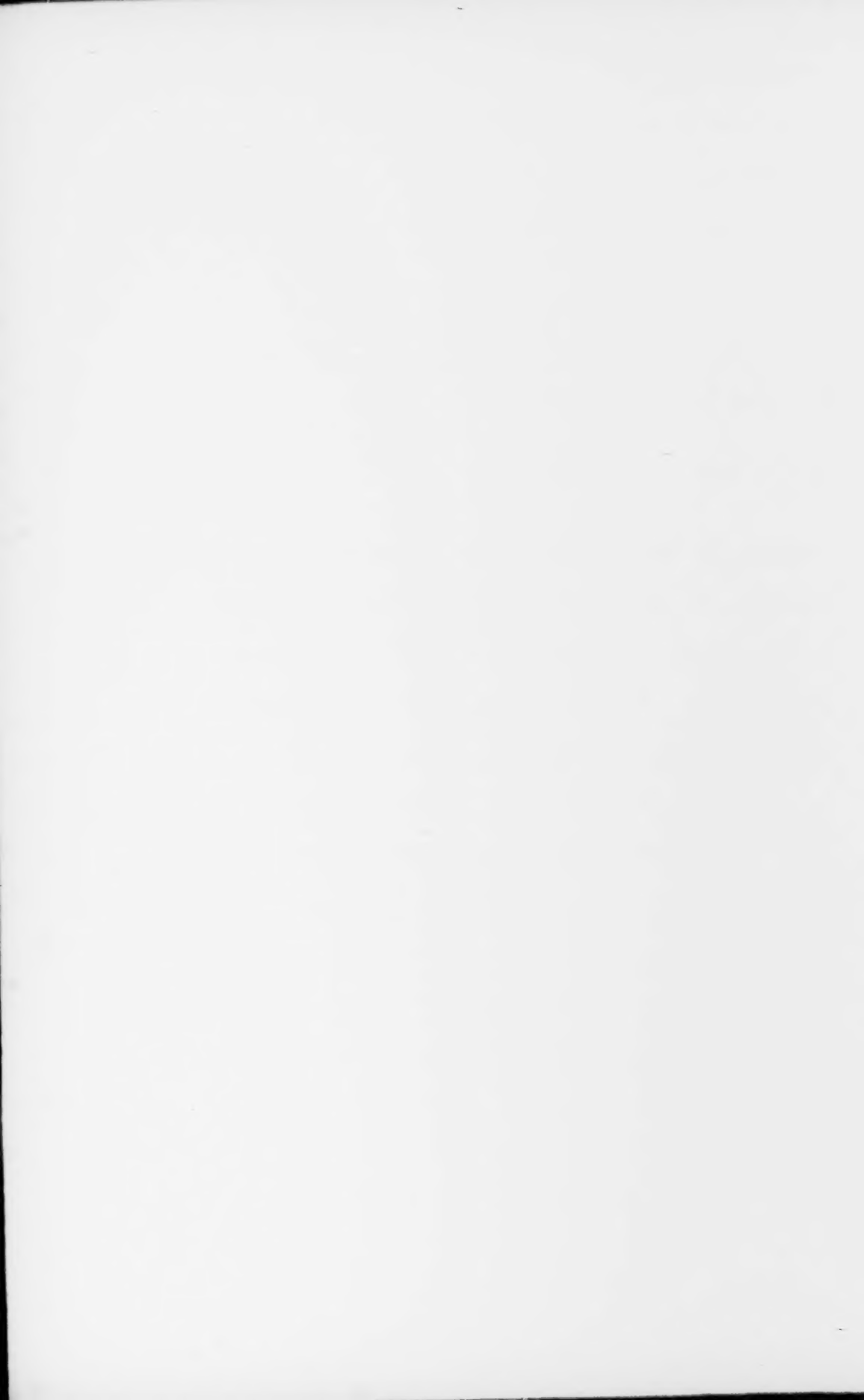
Signed this 18th day of April, 1989.

Paul Brown

United States District Judge

Mid 4-18-89 to: Catlett  
Richards  
Lively  
S8783.OPN--2 Thompson

(NOTE: It should be noted that Attorney of Record, C. H. Gillespie, III of Gillespie & Gillespie, 304 MBank Building, Sherman, Texas 75090 for defendant, FEDERAL LAND BANK OF TEXAS was not furnished a copy of this MEMORANDUM OPINION nor of the ORDER signed April 18, 1989. The ORDER, MEMORANDUM OPINION refers to Motion to Dismiss Complaint filed on behalf of Federal Land Bank of Houston - which bank has not existed since about 1979; therefore it is in error.)



EOD 8-22-89

FILED  
8-22-89IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

v.

S-87-83-CA

JOHN R. LIVELY, et al

O R D E R

On this day came on for consideration plaintiff's Motion to "Set Aside" Judge Brown's Order of Dismissal of Plaintiff's Claims for Lack of Subject Matter Jurisdiction. Plaintiff's Motion to Enlarge Time, etc., and Plaintiff's Motion for Sanctions Under Rules: 37, 34, and 26, and the Court having considered the same, is of the opinion that such motions should be denied.

It is, therefore, ORDERED that plaintiff's Motion to "Set Aside" Judge Brown's Order of Dismissal of Plaintiff's Claims for Lack of Subject Matter Jurisdiction, Plaintiff's Motion to Enlarge Time, etc., and Plaintiff's Motion for Sanctions Under Rules: 37, 34, and 26 be, and the same are hereby, DENIED.



Signed this 21st day of August, 1989.

Paul Brown

UNITED STATES DISTRICT JUDGE

Mid 8-22-89 to:

Catlett  
Richards  
Lively  
Thompson  
Richards  
Gillespie

S8783CA OFN --1-2

(NOTE: The Civil Docket Sheet Page 3, Item No. 397 dated 8-21-89 -"MOTION of pltf to COMPEL answers from deft Florence Catlett bh" was never acted on by Judge Paul Brown; therefore, he could not proceed with his ORDER since there was uncompleted matters still before the Court.



No. 89-2974

M. WILEY CATLETT, Plaintiff-Appellant,  
v.  
JOHN R. LIVELY, ET AL, Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of Texas  
(S-87-83-CA)

(March 14, 1990)

Before GEE, DAVIS and JONES, Circuit Judges. 1/

PER CURIAM:

Having reviewed appellant's arguments and the district court's order of dismissal, we conclude that the district court correctly determined that it lacked subject matter jurisdiction. Therefore, for the reasons stated in its memorandum opinion, the judgment of the district court is AFFIRMED.

1/ Local Rule 47.5 provides: The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.



IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

NO. -- 89-2974

---

M. WILEY CATLETT,  
Plaintiff-Appellant,  
  
versus  
  
JOHN R. LIVELY, ET AL.,  
Defendants-Appellees.

- - - - -

Appeal from the United States District Court  
for the Eastern District of Texas

- - - - -

ON PETITION FOR REHEARING  
AND  
SUGGESTION FOR REHEARING EN BANC

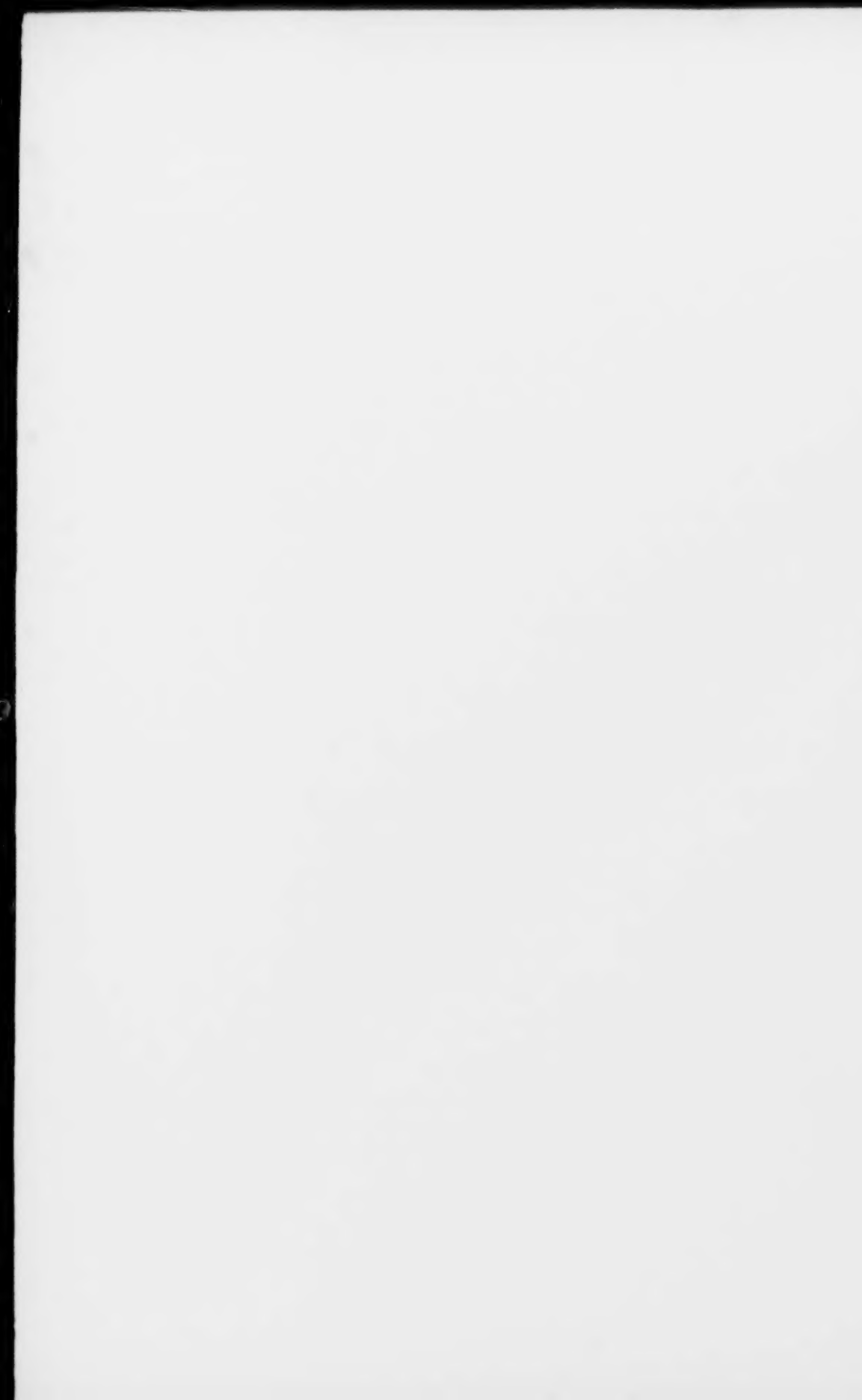
(Opinion March 14, 1990, 5 Cir., 199, \_\_ F.2d  
( April 26, 1990 )

Before GEE, DAVIS and JONES, Circuit Judges.

PERCURIAM:

( X ) The Petition for Rehearing is DENIED  
and no member of this panel nor Judge in  
regular active service on the Court having  
requested that the Court be polled on re-  
hearing en banc, (Federal Rules of Appellate  
Procedure and Local Rule 35) the Suggestion  
for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED  
and the Court having been polled at the request



of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

CLERK'S NOTE:

Signed: Edith H. Jones

SEE FRAP AND LOCAL  
RULES 41 FOR STAY  
OF THE MANDATE.

United States Circuit Judge

REHG-6

U. S. COURT OF APPEALS

F I L E D

APRIL 26, 1990

GILBERT F. GANUCHEAU,  
CLERK

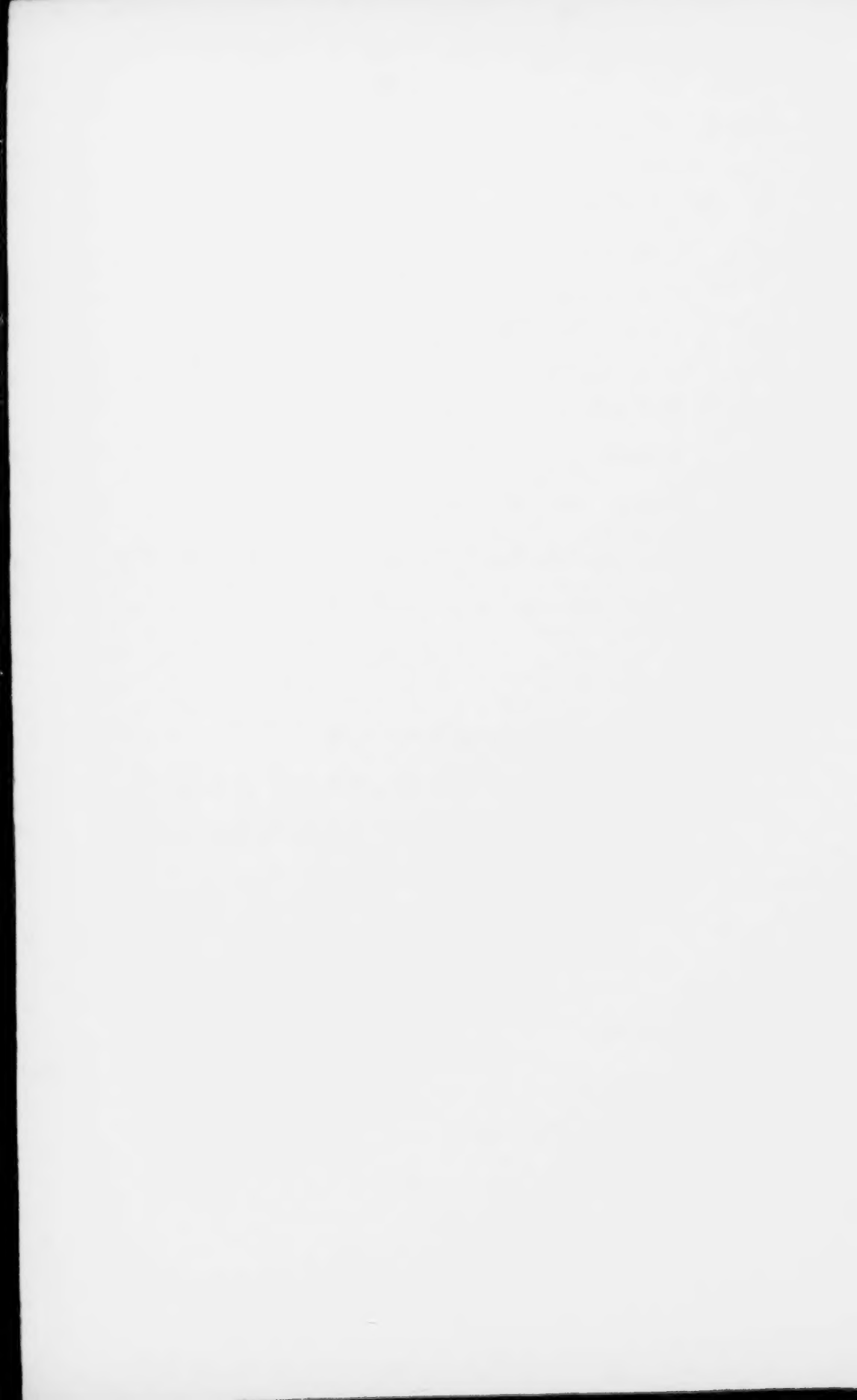


No. 89-2974

JOHN R. LIVELY, ET AL, Defendants-Appellees.

O R D E R :

IT IS FURTHER ORDERED that the motion of Appellees, John R. Lively and Florence Iona Catlett, individually and as independent executrix of the estate of P. C. Catlett, deceased and as administratrix with will annexed to the estate of Charlie Catlett,



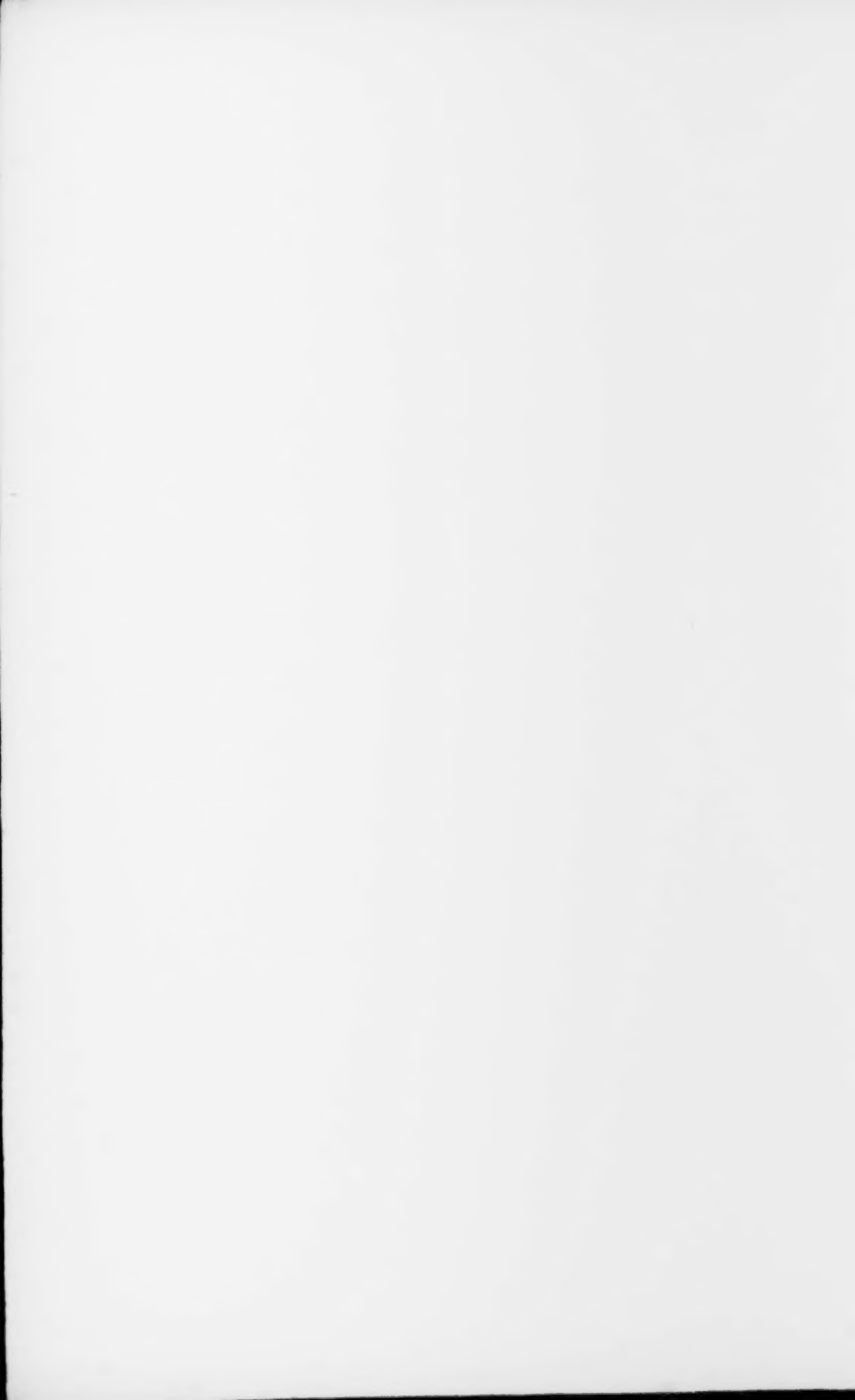
deceased, to strike the Clerk's authorization extending time for appellant to file a petition for rehearing to and including April 11, 1990 is DENIED.

/s/ Edith H. Jones

---

JUDGE EDITH H. JONES  
UNITED STATES CIRCUIT JUDGE

U.S. COURT OF APPEALS  
F I L E D  
April 3, 1990  
GILBERT E. GANUCHEAU,  
CLERK



Vol. 142 P. 950

F I L E D

SEPT. 13, 1974

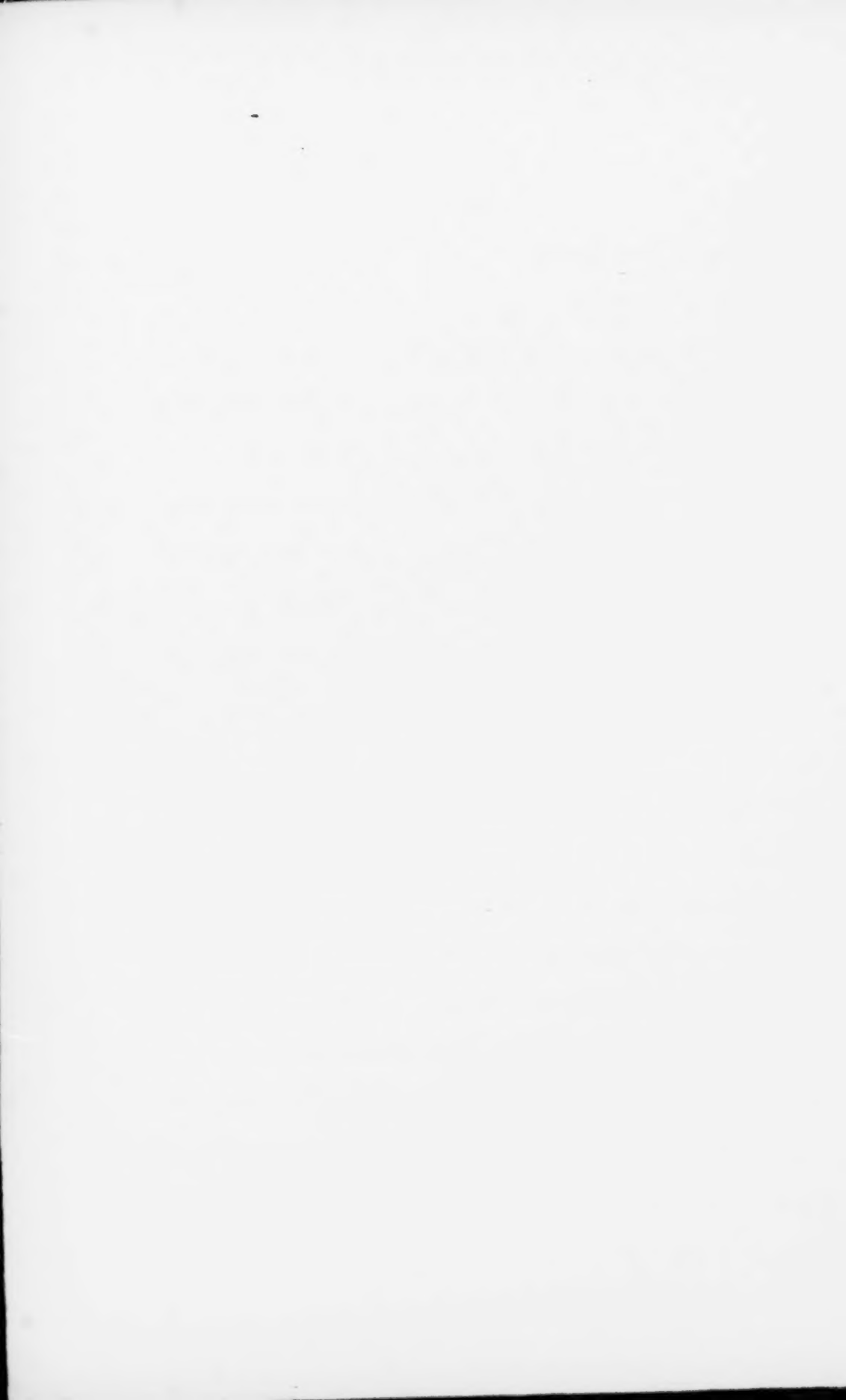
- 7989 -

THE STATE OF TEXAS

COUNTY OF BOSQUE

"That I, CHARLIE CATLETT, a single man, now a resident of the County of Bosque, and the State of Texas, being in good health commensurate with my age, of sound and disposing mind and memory and above the age of eighteen years, do make and publish this my last will and testament, hereby revoking all wills by me heretofore made. . . . .

SECOND: I give and bequeath to my brother, ERNEST LUTHER CATLETT, for and during his natural life all of my property, real, personal and mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and at his death all of



said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas.

It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee simple by my brother, PHARON CRAWFORD CATLETT. . . . . "

THIRD:

(Plaintiff's Exhibit "A" in "Wiley's" Complaint filed April 16, 1987 in the United States District Court, For The Eastern District of Texas, Sherman Division. No. S-87-83-CA.)

Vol. 142 page 950 - 953; FILED, SEP. 13, 1974  
Mary Jo Hill, County Clerk, Denton County, Tx.

(See Exhibit "J", C. of A. pages 1, 2, & 3 of that exhibit "J" for "Wiley's" position regarding the construction of that SECOND PROVISION of "Charlie Catlett's Will"

November 9, 1984 "A true and correct copy  
MARY JO HILL, County Clerk, Denton County,  
Texas



LAW OFFICES OF JOHN R. LIVELY  
1130 FORT WORTH CLUB TOWER  
FORT WORTH, TX. 76102

December 16, 1980

Mr. R. David Broiles  
Brown, Herman, Scott, Dean and Miles  
203 Fort Worth Club Building  
Fort Worth, TX. 76102

Re: Number 236-39718-76  
M. WILEY CATLETT, ADMINISTRATOR  
OF THE ESTATE OF ERNEST LUTIER  
CATLETT, DECEASED v. FLORENCE IONA  
CATLETT, EXECUTRIX OF THE ESTATE OF  
PHARON C. CATLETT, ET AL.

Dear David:

Enclosed is a copy of a draft of a proposed Judgment in the above numbered and entitled cause which I would appreciate your reviewing and adding your comments thereto. As you can tell, the Judgment does not recite the legal description at this point, and I will rely upon Mr. Trickey to furnish this. I am of the opinion that the settlement will need to be approved by the Tarrant County Probate Court, and I would appreciate your filing an application to secure such approval as soon as possible.

I am also enclosing copies of the tax statements from Denton County and a copy of a letter from the Aubrey Independent School District with regard to taxes on the land for the years 1974 to the present time, which total \$3,725.46. Your client's portion of this is \$620.91.



I am also enclosing my trustee account check payable to the Estate of Ernest Luther Catlett, Deceased, (NOTE: IT WAS NOT ENCLOSED) in the sum of \$1,233.33, which represents one-sixth of the award. Although Mr. Catlett was not represented at the hearing. Mrs. Catlett retained me to represent her, and my representation had some direct (NOTE: NOT SO) benefit for Mr. Catlett. My fee arrangement with Mrs. Catlett was that I would charge one-third of the amount in excess of the condemnor's offer. The condemnor's offer was \$3,500.00, (NOTE: WILEY HAD CORRESPONDENCE WITH THE ATTORNEY FOR THE BRAZOS ELECTRIC POWER COOPERATIVE, INC. Mr. R. Scott Moran of Mills, Riley & Moran, P.O. Box 7872, Waco, Tx. 76710. And WILEY HAS A LETTER OFFERING \$7,400.00 which WILEY & FLO COULD HAVE SHARED IF SHE HAD ACCEPTED THAT OFFER, so LIVELY CHARGED HIS CLIENT, "FLO" for unnecessary work.) and the final settlement was \$7,400.00, so by my calculations, I should receive a fee in the amount of \$1,300.00. Although I did not represent Mr. Catlett, I think it would be proper for him to pay one-sixth of my fee, or \$216.00.

I have talked with Mr. Trickey regarding the discrepancy in acreage, and it appears to me that we are unable to explain it in terms of conveyances. It appears that the only way we can resolve the acreage discrepancy is to have the land surveyed. Since the need for a survey is caused by your client, it would appear to me that he should pay more than one-sixth of the expenses.

Last week end, I went to Aubrey and examined the property with a man by the name of J. R. Wilson. Mr. Wilson indicated that he



would be interested in purchasing for cash approximately thirty-five acres on the north side of F.M.428. If your client is interested in discussing this sale with Mr. Wilson, he should contact him immediately and see if the sale can be arranged. If this sale can be arranged, it would not be necessary to have all the partition language in the Judgment, and Mr. Catlett could be awarded a specific portion of the tract.

I would appreciate your having your client reimburse Mrs. Catlett for the taxes in the sum of \$620.91 as soon as possible, and I would also appreciate your discussing my fee arrangement with your client.

Very truly yours,

/s/ John

---

JOHN R. LIVELY

JRL:le  
Enc.

(See, Plaintiff's complaint Ex. "B" therein.)  
F.R.C.P., Rule, 10(c)

—

App. 15

BROWN, HERMAN, SCOTT, DEAN & MILES  
ATTORNEYS AND COUNSELORS AT LAW  
Suite 203 Fort Worth Club Building  
Fort Worth, Texas 76102

The Honorable Robert Burnett      Dec. 17, 1980  
Probate Court  
Tarrant County Courthouse  
Fort Worth, TX 76102

RE:    Cause No. 77-2726  
      The Estate of Ernest Luther  
      Catlett, Deceased

---

Dear Judge Burnett:

Enclosed please find an Application to Approve a Settlement, which was entered into after we commenced trial in the 236th District Court. The sole beneficiary of this Estate is the Administrator, M. Wiley Catlett, who resides in Illinois. I would like to present this Motion to the Court for review and approval, and have attached a proposed Order for your consideration. If this settlement meets with your approval, then we will enter the Final Judgment. The only thing lacking between the proposed Judgment and the Final Judgment is the legal description, which is being furnished by a title company in Denton.

I will contact your office concerning the hearing on this matter.

Very truly yours,

/s/      R. David Broiles

RDB:js  
Encl. as stated

FILED DEC. 22, 1980  
PROBATE DEPT.  
County Clerk, Tarrant Co., Tx.



CAUSE NO. 77-2726

IN RE: THE ESTATE OF     IN THE COUNTY COURT  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TX.  
DECEASED                     SITTING IN PROBATE

MOTION TO APPROVE SETTLEMENT

TO THE HONORABLE COURT:

COMES NOW the Administrator, M. Wiley Catlett, and makes application to the Court to approve a settlement of a disputed claim, and in support thereof would show the Court as follows:

## I.

On October 17, 1977, this Court approved the Application of the Administrator to continue the prosecution of litigation filed on behalf of the estate of ERNEST LUTHER CATLETT. Said litigation related to the following item:

1. A claim to recover the interest of ERNEST LUTHER CATLETT in certain property located in Denton County, Texas.
2. A litigation to recover sums allegedly converted by PHARON CATLETT, which should have been paid to ERNEST LUTHER CATLETT under



the Will of CHARLIE CATLETT.

II.

On December 4, 1979 the Court approved the employment of R.David Broiles to prosecute this suit and approved the employment contract entered into between the Administrator and said attorney.

III.

Attached hereto and incorporated herein is a form of a proposed Judgment to be entered in the 236th Judicial District Court in Cause No. 236-39718-76, styled M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, VS. FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C. CATLETT AND FLORENCE CATLETT, SAID Judgment was entered after four (4) days of trial, in which the Plaintiff presented his case. Said Judgment reflects an agreement entered into by the Administrator in settling the above-styled case short

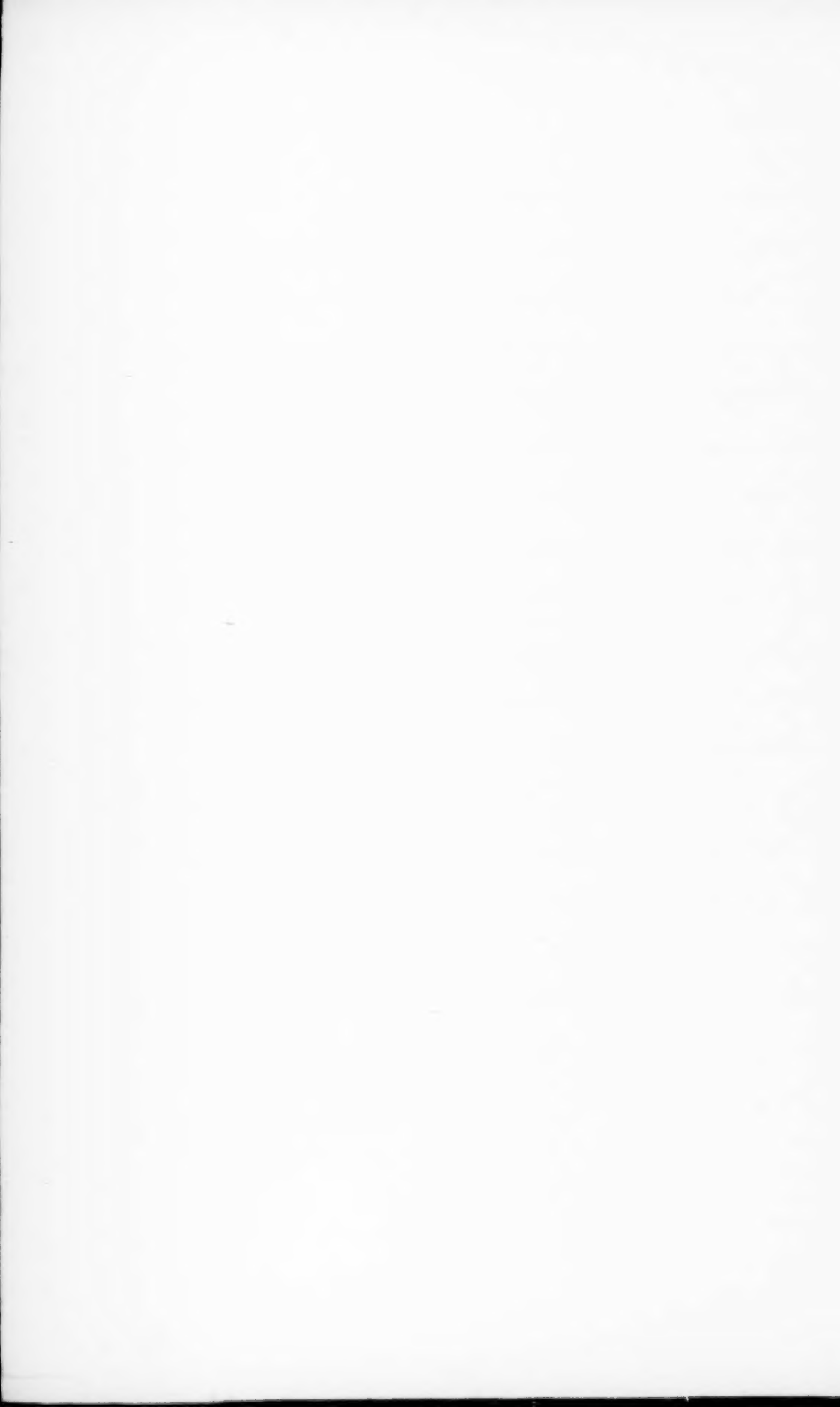


of verdict and Contested Judgment.

Said Judgment is fair to the Estate and is a favorable Judgment for the Plaintiff. Plaintiff has recovered all of the interest of ERNEST LUTHER CATLETT, Deceased, in the real property, which was the subject matter of the lawsuit. In consideration of said recovery of a one-sixth ( $1/6$ ) interest in said real estate, the Plaintiff has abandoned and compromised the claims to recover certain funds which were allegedly converted by PHARON CATLETT.

#### IV.

Settlement is fair and in the best interest of the Estate. The Applicant/Administrator prays that this Court will approve said settlement, and enter an Order authorizing the entry of the Judgment attached hereto in a final form.



WHEREFORE, PREMISES CONSIDERED, the Applicant prays that this request be approved.

Respectfully submitted,

BROWN, HERMAN, SCOTT, DEAN & MILES  
203 FortWorth Club Building  
Fort Worth, Texas 76102  
(817) 332-1391 Metro 429-0851

/s/

By R. David Broiles

---

R. David Broiles

ATTORNEYS FOR APPLICANT,  
M. WILEY CATLETT, ADMINISTRATOR



F I L E D  
Mar. 12, 1981

NUMBER 77-2726

IN RE: THE ESTATE OF        IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TEXAS  
DECEASED                       SITTING IN PROBATE

RESPONSE TO ADMINISTRATOR'S  
MOTION TO APPROVE SETTLEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES THE ESTATE OF PHARON C. CATLETT,  
DECEASED and files this, its Response to  
Motion to Approve Settlement previously filed  
herein, and for such Response would respect-  
fully show the Court the following:

I.

THE ESTATE OF PHARON C. CATLETT, DECEASED,  
is a Defendant in Cause Number 236-39718-76,  
styled M. WILEY CATLETT, ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT, DECEASED v.  
FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE  
OF PHARON C. CATLETT, ET AL., in the 236th  
Judicial District Court of Tarrant County,



Texas. On November 17, 1980, said case was called to trial, and the attorneys for the parties, prior to the jury returning a verdict, reached an agreement to settle all matters in dispute. On November 20, 1980, the settlement agreement was dictated in open court in the presence of the parties, and after the attorneys had agreed to the settlement, the Court inquired of the parties as to whether they approved and agreed to said settlement, to which the parties responded affirmatively. The Judge of the 236th Judicial District Court of Tarrant County, Texas, then approved the settlement agreement of the parties.

## II.

On December 22, 1980, the Administrator, by and through his attorney, filed a Motion to Approve Settlement, and said Motion is presently pending before the Court.

## III.

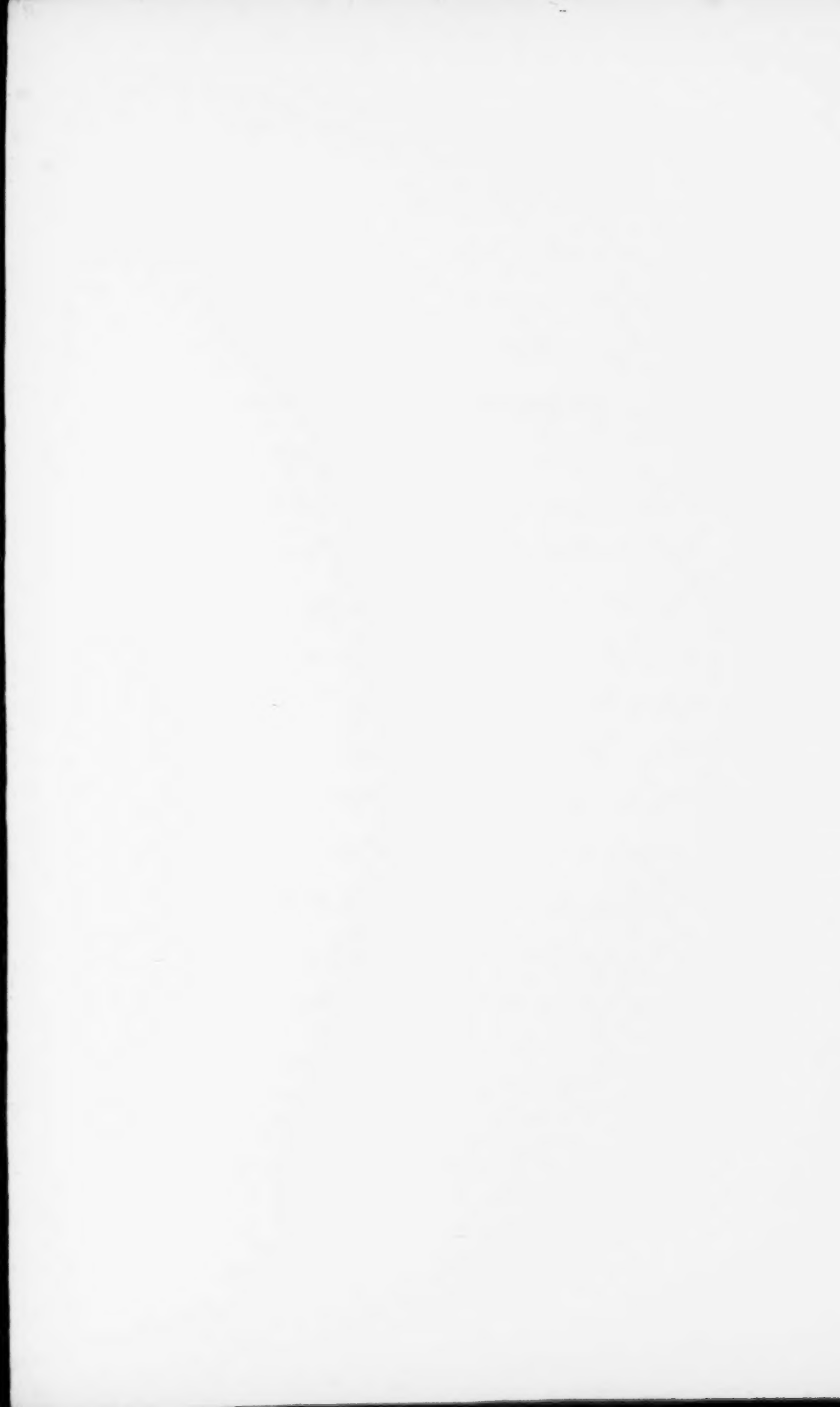


Attached to this Response as Exhibit "A" is a true and correct copy of a proposed Judgment prepared by the undersigned attorney which sets forth the agreement of the parties on November 20, 1980, in Cause Number 236-39718-76. The undersigned attorney would show the Court that it is necessary that this Court examine and approve said settlement on behalf of the Estate before the attached Judgment can be entered in Cause Number 236-39718-76.

WHEREFORE, THE ESTATE OF PHARON C. CATLETT, DECEASED prays that the Administrator's Motion to Approve Settlement and this Response be set for hearing, and that on hearing hereof this Court approve the settlement that has been entered into by and between the parties and their attorneys.

CERTIFICATE  
OF  
SERVICE

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Tx. 76102  
/s/ John R. Lively  
Attorney for THE ESTATE OF  
PHARON C. CATLETT, DECEASED



NUMBER 77-2726

IN RE: THE ESTATE OF      IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TEXAS  
DECEASED                      SITTING IN PROBATE

CLAIM AGAINST THE ESTATE OF ERNEST LUTHER  
CATLETT, DECEASED

TO: THE ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, by and through its duly  
appointed agent, Mr. Michael R.  
Burkett, 102 Oil and Gas Building,  
Fort Worth, Texas 76102.

Now comes THE ESTATE OF PHARON C. CAT-  
LETT, DECEASED, and makes this claim, pur-  
suant to a Judgment rendered by the 236th  
District Court of Tarrant County, Texas,  
in Cause Number 236-39718-76, styled M. WILEY  
CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST  
LUTHER CATLETT, DECEASED v. FLORENCE IONA  
CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C.  
CATLETT, ET AL., in which cause of action it  
was adjudged that the Estate of Ernest Luther  
Catlett was the owner of an undivided one-  
sixth (1/6) interest in and to five (5) tracts



of land located in Denton County, Texas. Claimant has paid the Tax Assessor-Collector of Denton County, Texas, ad valorem taxes on said properties for the years 1974 through 1980, which payments included the payment on the undivided one-sixth (1/6th) interest adjudicated to be owned by the Estate of Ernest Luther Catlett, Deceased. Claimant now asks reimbursement in the amount of Six Hundred Forty-two and 47/100 Dollars (\$642.47), said sum representing the sums expended by the Claimant on behalf of the Estate of Ernest Luther Catlett, Deceased.

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102  
(817) 338-1616

/s/ John R. Lively

---

JOHN R. LIVELY  
Attorney for Claimant  
State Bar I.D. #12435000

THE STATE OF TEXAS x  
COUNTY OF TARRANT x



BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY, who, being by me first duly sworn, upon oath, deposes and says that he is the attorney for the Claimant, The Estate of Pharon C. Catlett, Deceased, and authorized to make this Affidavit: that he has read the above and foregoing Claim Against the Estate of Ernest Luther Catlett, Deceased; that each and every statement contained therein is true and correct; that said claim is due and owing to Claimant; that all just and lawful offsets, payments, and credits have been allowed.

/s/ John R. Lively

SUBSCRIBED AND SWORN TO BEFORE ME by the said JOHN R. LIVELY on this the 13th day of May, 1981, to certify which witness my hand and seal of office.

/s/ Linda Endelrock

NOTARY PUBLIC in and for  
Tarrant County, Texas

CERTIFICATE OF SERVICE

This is to certify that I have on this the 13th day of May, 1981, hand delivered a true and correct copy of the above and foregoing Claim Against the Estate of Ernest Luther Catlett, Deceased, to the agent for the Estate, Mr. Michael R. Burkett.

/s/ John R. Lively



NUMBER 77-2726

IN RE: THE ESTATE OF IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TX.

DECEASED

SITTING IN PROBATE

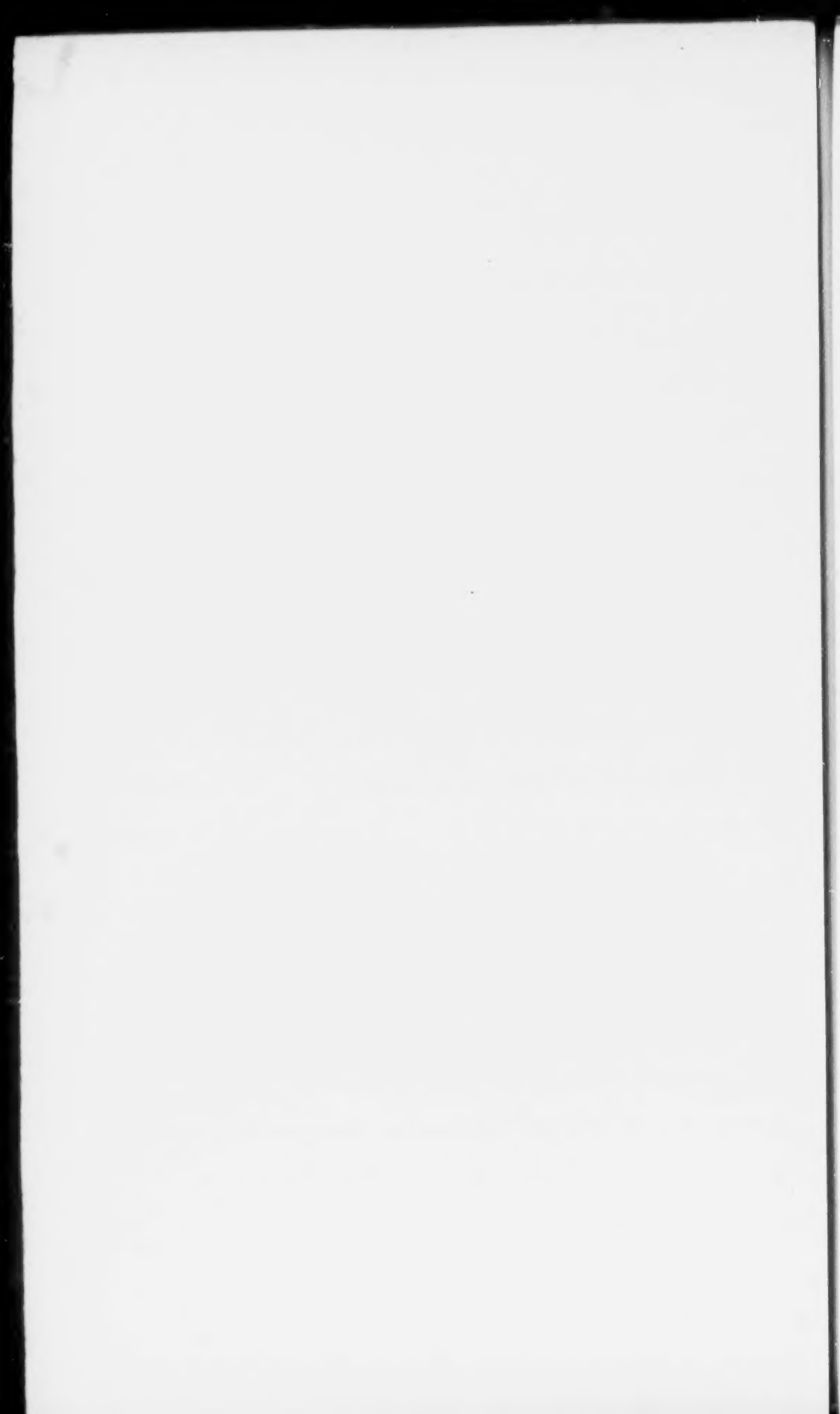
ORDER CONFIRMING SETTLEMENT

On the 13th day of May, 1981, came on to be heard the Administrator's Motion to Approve Settlement, the Respondent's Response to Administrator's Motion to Approve Settlement, and the Counter-Movant's Motion to Approve Settlement. The Court, having been satisfied that proper notice has been given to all parties in interest and having heard the evidence and argument of counsel concerning said settlement finds that the settlement is fair and in the best interest of the Estate, and the Court further finding that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement was made in open court and entered of record and



requested that the Judge of the 236th District Court approve said settlement, and that said attorneys also requested that the Court approve said settlement, and the trial court having determined that the settlement was fair and equitable and that the parties had entered into said settlement knowingly and freely, the Judge of the 236th District Court approved said settlement as the rendered Judgment of the Court, and this Court finds that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement should be Approved, confirmed, and ratified.

It is therefore ORDERED, ADJUDGED and DECREED that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement in Cause Number 236-39718-76, Styled M. WILEY CATLETT, ADMINISTRATOR OF THE



ESTATE OF ERNEST LUTHER CATLETT, DECEASED v.  
FLORENCE IONA CATLETT, EXECUTRIX OF THE  
ESTATE OF PHARON C. CATLETT, ET AL, shall be  
and is APPROVED, CONFIRMED and RATIFIED.

SIGNED this the 14th day of May, 1981.

/s/ Robert M. Burnett

---

JUDGE PRESIDING

A CERTIFIED COPY

ATTEST: 2-25-83  
J. W. BOORMAN  
District Clerk, Tarrant  
County, Texas

By Arnett Bruitt



NUMBER 81-8158-B

FLORENCE IONA  
CATLETT

IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

vs.

158th JUDICIAL DIST.

M. WILEY  
CATLETT, ET AL

ORDER FOR SANCTIONS AND DEFAULT INTERLOC-  
UTORY JUDGMENT ORDERING PARTITION AND  
APPOINTING COMMISSIONERS

On the 10th day of September, 1982,  
came on to be heard FLORENCE IONA CATLETT,  
Plaintiff, Motion for Sanctions for failure  
of Party to Appear for Depositions in Vio-  
lations of Court Order in the above enti-  
tled and numbered cause. Plaintiff appeared  
by attorney of record and announced ready. M.  
WILEY CATLETT, Defendant, appeared by attorney  
of record and announced ready. After hearing  
evidence and argument of counsel, the court  
is of the opinion and finds that:

1. Defendant, M. WILEY CATLETT, ADMIN-  
ISTRATOR OF THE ESTATE OF ERNEST LUTHER CAT-  
LETT, is in violation of this Court's order



dated and signed August 25, 1982, in that M. WILEY CATLETT, in violation of this Court's order, did fail to produce documents which he claimed to be privileged for inspection in camera at 8:30 o'clock A.M. on August 31, 1982, and that he failed to make himself immediately available for deposition at a location selected by Plaintiff's counsel and that he failed to produce items requested in Plaintiff's Notice of Deposition dated July 22, 1982, and that M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, is in violation of this Court's order dated and signed September 1, 1982, in that he failed to appear for deposition at the offices of Plaintiff's attorney, Suite 1130, Fort Worth Club Tower, 777 Taylor St., Fort Worth, Tarrant County, Texas, at 3.00 o'clock P.M. on September 2, 1982.

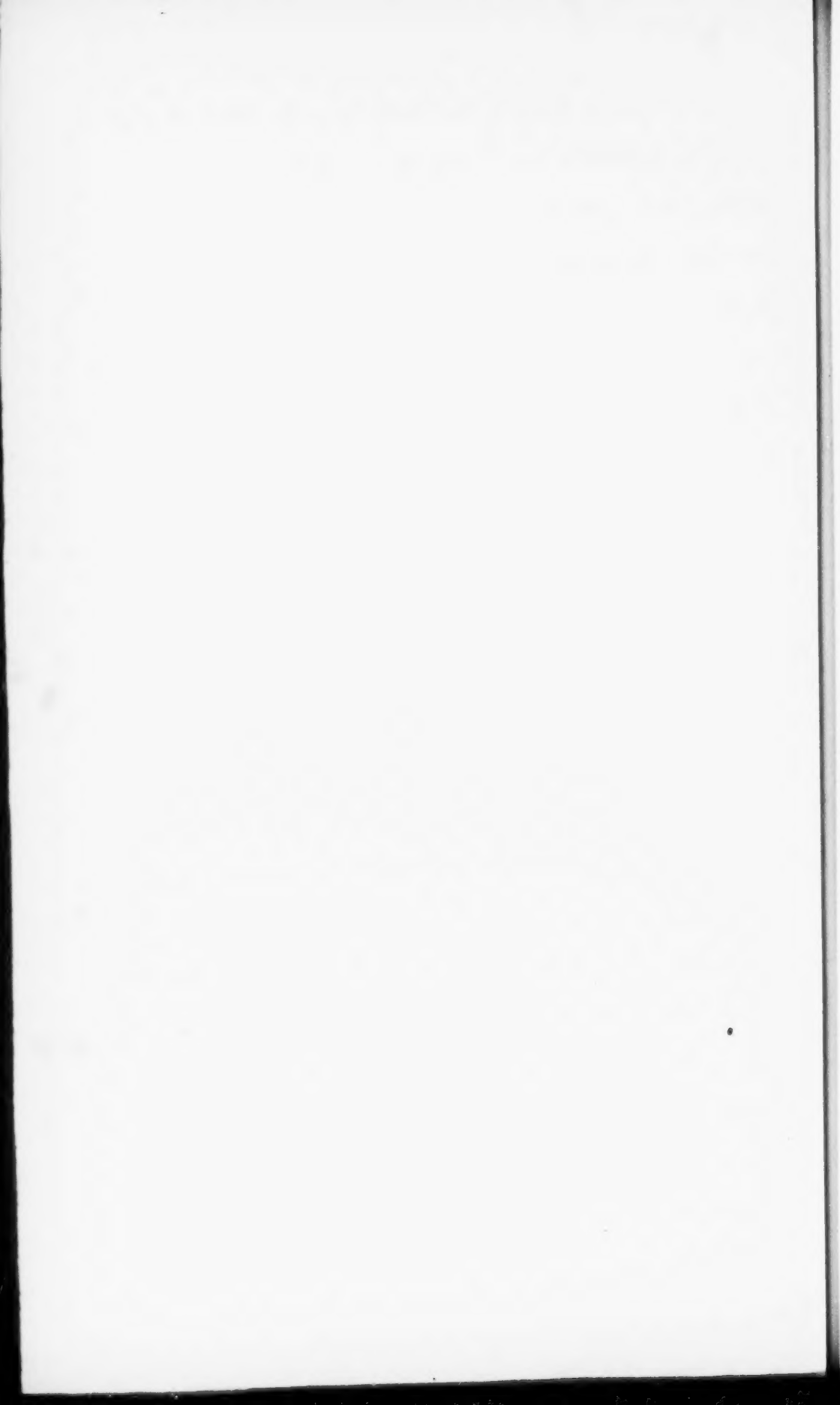
2. The Court further finds that Defendant, M. WILEY CATLETT'S, failure to comply both Court orders was willful and without meritorious excuse.



3. The Court further finds that Plaintiff's costs of filing and hearing this Motion, including reasonable attorney's fees, is Six Hundred Fifty Dollars (\$650.00), and that same should be assessed against the Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, as sanctions.

4. The Court further finds that as sanction for the willful failure of M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, to comply with this Court's proper orders that Defendant's, M. WILEY CATLETT, Original Answer, First Amended Original Answer, and First Supplemental Answer are ordered stricken forthwith.

5. The Court further finds that as sanction for the willful failure of M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, to comply with this Court's proper orders that the Plaintiff, FLORENCE IONA CATLETT, should be granted an



interlocutory default judgment as prayed for in her First Original Petition, said interlocutory default judgment order a partition of the following described property:

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile West of the town of Aubrey, Texas, containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the Dennis Cowan Survey;

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey;

THENCE East 713-1/2 varas, stake for corner;

THENCE South 633 varas corner;

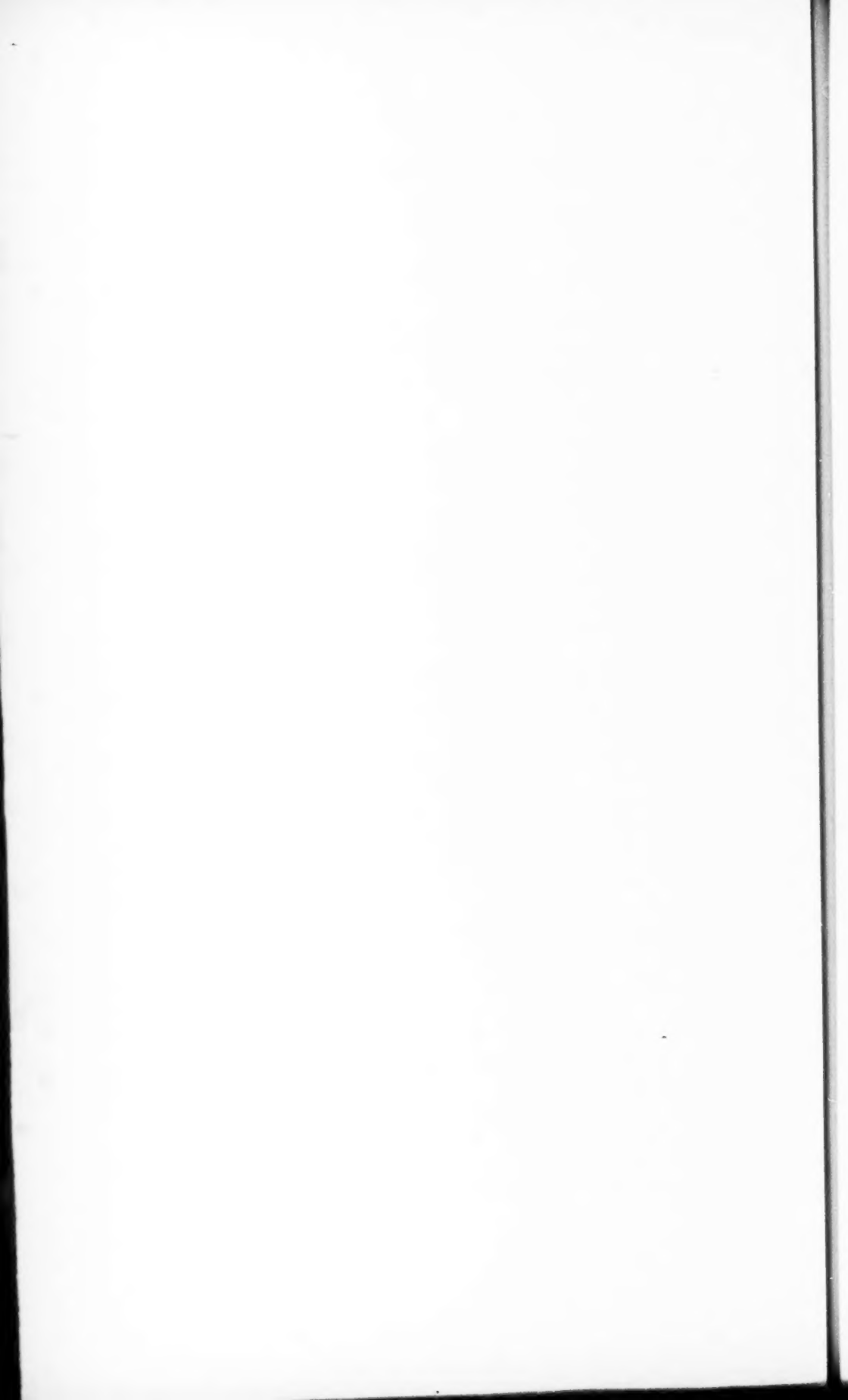
THENCE West 713 1/2 varas corner, the West Boundary Line of said Cowan Survey;

THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records, Denton County, Texas.

SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett;

BEGINNING at the Northwest corner of the above said tract, said corner being survey station 543 plus 47;



THENCE South along the West boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway;

THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50;

THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50;

THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East boundary line of said tract;

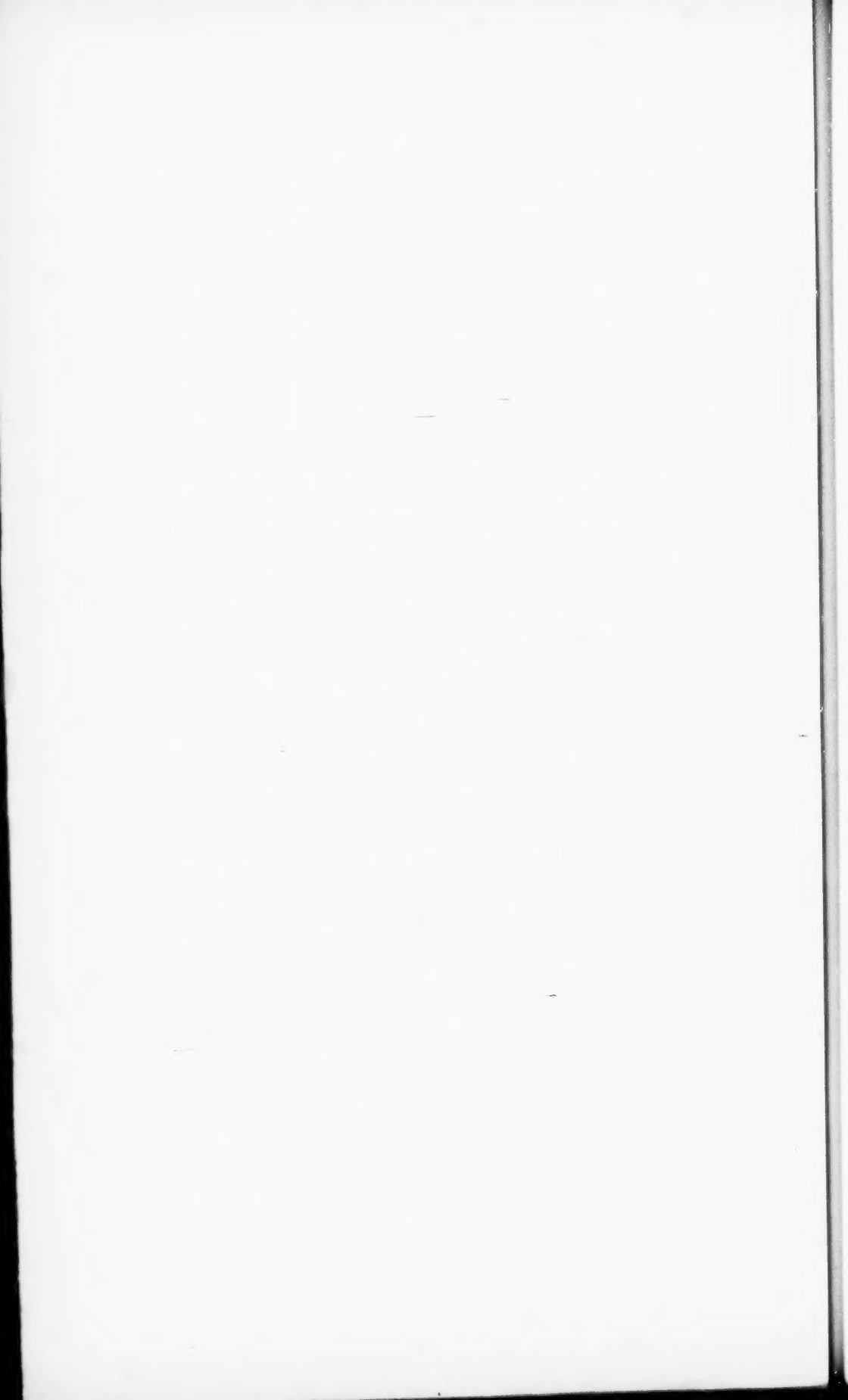
THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25;

THENCE North 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00;

THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the point of beginning and containing 2.07 acres. more or less, 1.24 acres being within the limits of the present right-of-way as shown by right-of-way map on file with the state Highway

Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

SECOND TRACT: Being a tract of land of which J. L. Catlett was the original owner and patentee, said land being conveyed to said J. L. Catlett by patent No. 294, vol 1, dated Nov. 18, 1881, recorded in Records of Denton County, Texas, on February 23, 1882, to which record reference is made herein for a full description of said land



THIRD TRACT: Being a part of the George Lane Survey in Denton County, Texas, described as follows:

BEGINNING at the SE corner of the 320 acre survey in the name of P. H. Vizer;  
THENCE East 433 varas to a post oak blazed on four sides;  
THENCE North 712 1/2 varas a stake for corner on the EB line of the said George Lane Survey;  
THENCE West 433 varas a stake in the WB line of the said George Lane Survey;  
THENCE South 712 1/2 varas to the place of beginning, containing 54 1/2 acres of land more or less, being the same land conveyed to J. L. Catlett by Thos. B. Cagle and wife, Deed recorded in Volume 31, Page 566, Denton County Deed Records, to which reference is here made .

FOURTH TRACT: Being 54 acres of land in Denton County, Texas, a part of the Stephen Cantwell 160 acre survey, described as follows:

BEGINNING at the SW corner of the said Cantwell Survey;  
THENCE East 540 varas to the SE corner of the said Cantwell Survey;  
THENCE North 566 varas to John C. Wilson's south line;  
THENCE West 540 varas;  
THENCE South 566 varas to the place of beginning, being the same land conveyed to J. L. Catlett by J. G. Loudder and wife, S. A. Loudder, on November 12, 1880. Deed of record Book P. Pages 550 and 551, of Denton County Deed Records to which reference is here made.

FIFTH TRACT: Being a part of the John Jordan Survey in Denton County, Texas, and described as follows, to-wit:

Tract of 50 acres in the north end of the



John Jordan Survey and bounded as follows,  
to-wit:

BEGINNING at the NW corner of said Jordan Survey;

THENCE East 1179 varas to the NE corner of the same to a stake from which a Post Oak marked X bears S 20 degrees E 5 varas and another marked H, bears 7 varas;

THENCE South 339  $\frac{4}{10}$  varas to a stake;

THENCE West 1179 varas to a stake on the West line of the Jordan Survey;

THENCE North 339  $\frac{4}{10}$  varas to the place of beginning, found in Deed Records, Book Y, Page 50, Deed Records, Denton County, Texas.

6. The Court finds that the Plaintiff, FLORENCE IONA CATLETT, owns an undivided five sixths ( $\frac{5}{6}$ ) interest in fee simple in said property; that the ESTATE OF ERNEST LUTHER CATLETT, being administered by M. WILEY CATLETT, owns an undivided two-fifteenths ( $\frac{2}{15}$ ) interest in fee simple in said property; and that Defendant, R. DAVID BROILES and the law firm of Brown, Herman, Scott, Dean & Miles, a Partnership, owns an undivided one-thirtieth ( $\frac{1}{30}$ ) interest in fee simple in said property.

7. The Court finds that the whole of the said property is susceptible to fair and

7

equitable partitioning between the parties so as to reflect their respective interests,

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1. Plaintiff, FLORENCE IONA CATLETT, be awarded Judgment in the sum of Six Hundred Fifty Dollars (\$650.00) as and for her costs and attorney's fees incurred in connection with this Motion against M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, said sum shall be paid in the due course of administration.

2. Defendant's, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, First Original Answer, First Amended Original Answer, and Supplemental Answer are ordered stricken forthwith.

3. Plaintiff, FLORENCE IONA CATLETT, shall have and recover from Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, a default



Judgment as prayed for in her First Original Petition and that the property above described shall be partitioned between Florence Iona Catlett, The Estate of Ernest Luther Catlett, Deceased, and R. David Broiles and the law firm of Brown, Herman, Scott, Dean & Miles, a Partnership, such that the values of the parcels allotted to each party reflect the party's interest as recited above.

4. It is further ORDERED that J.A. Hinsley, Tom J. Fouts, and Ms. Pat Wilson, competent and disinterested persons are appointed commissioners to make and partition in accordance with this Decree and the law, and when the partition is completed, to report in writing and under oath of this Court by the 10th day of November, 1982.

5. It is further ORDERED that Mr. J. C. Green of Schoell Fields & Associates is appointed surveyor for the purpose of assisting the above named Commissioners in making the partition.



6. It is further ORDERED that the Clerk of this Court shall issue a Writ of Partition directing the Sheriff or any Constable of Denton County, Texas, commanding such Sheriff or Constable to notify each of the above named Commissioners and surveyor of their appointment. The Clerk shall accompany such Writ with a certified copy of this decree.

7. It is further ORDERED that hearing is set for September 28, 1982, before this Court for the purpose of determining the rights of reimbursement for contributions to the preservation of the property the subject of this partition, for adjusting the rights and equities between the parties in the partition of the property, and for the purpose of determining R. DAVID BROILES' reasonable and necessary attorney's fees incurred in this matter.

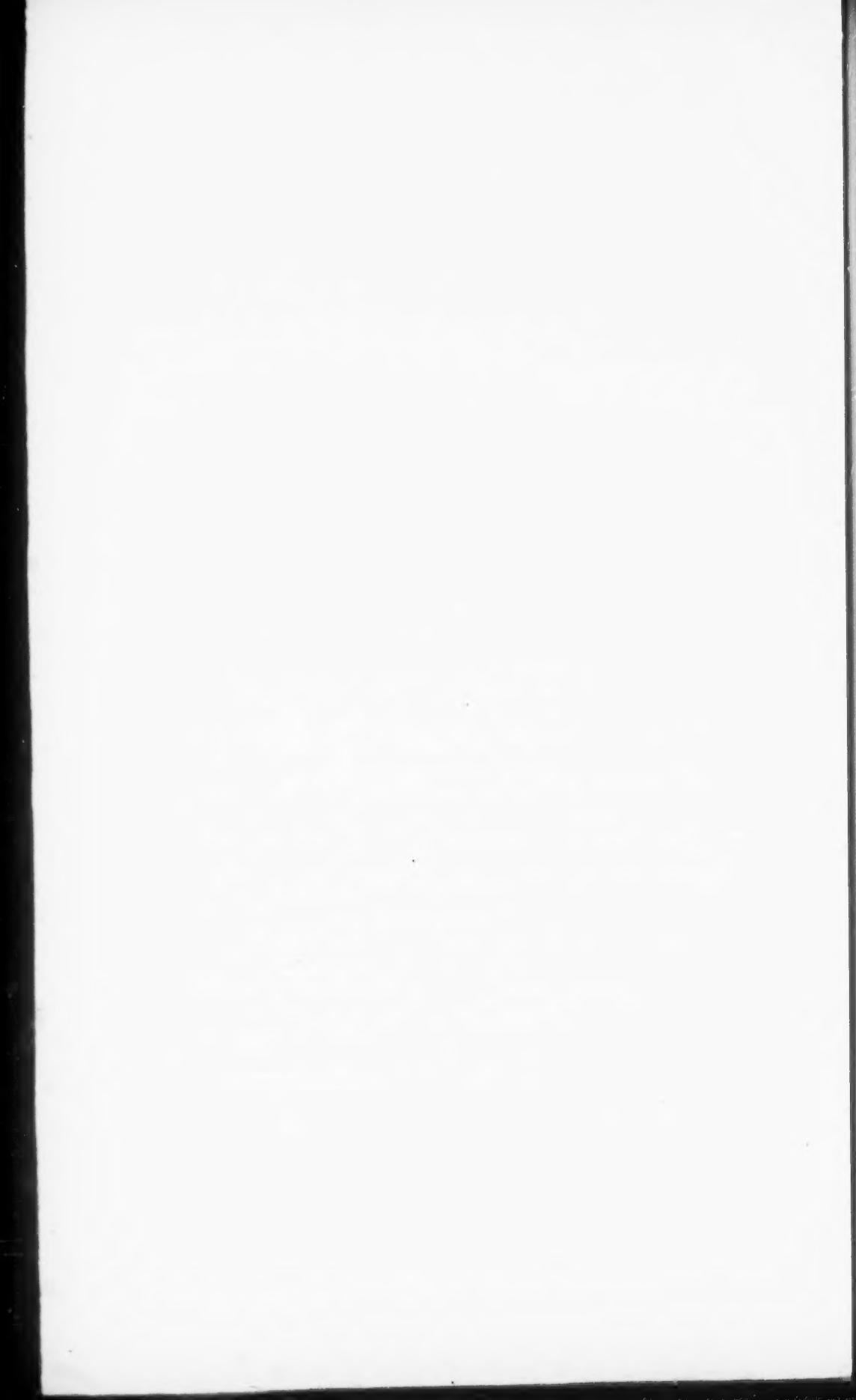
SIGNED this the 4th day of October, 1982.

JOHN NARSUTIS, JUDGE

JUDGE PRESIDING

CERTIFIED A TRUE COPY

Gladys Whetten  
District Clerk, Denton County,  
Texas by Villa Hughes, Deputy



NUMBER 81-8158-B

FLORENCE IONA  
CATLETTIN THE DISTRICT  
COURT OF DENTON  
COUNTY, TEXAS

v.

M. WILEY  
CATLETT, ET AL158th JUDICIAL  
DISTRICTINTERLOCUTORY ORDER

On the 28th day of September, 1982,  
CAME on to be heard FLORENCE IONA CATLETT,  
Plaintiff's Motion for Reimbursement and  
for Designation of Property To Be Set Aside.  
Plaintiff appeared by attorney of record and  
in person and announced ready. Defendant,  
M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE  
OF ERNEST LUTHER CATLETT, appeared by attor-  
ney and in person and announced ready. De-  
fendant, R. DAVID BROILES appeared in person  
and by attorney and announced ready. After  
hearing evidence and argument of counsel, the  
Court is of the opinion and finds that:

1. Pursuant to the terms of a Judgment  
rendered in Cause Number 236-39718-76, styled

M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE



OF ERNEST LUTHER CATLETT, DECEASED v. FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C. CATLETT, DECEASED, ET AL., in District Court of Tarrant County, Texas, 236th Judicial District, Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, became obligated to pay one-sixth (1/6th) of all ad valorem taxes levied and assessed against the property the subject of this partition suit.

2. Plaintiff, FLORENCE IONA CATLETT, has paid the ad valorem taxes assessed against the property since August 26, 1974, in the amount of Four Thousand Ninety-Five and 73/100 Dollars (\$4,095.73), which ad valorem taxes were assessed by the tax assessor and collector of Denton County, Texas, for the payment of Texas State taxes and Denton County, Texas, taxes and by the tax collector and assessor for the Aubrey Independent School District.

3. The Court finds that Defendant, M. WILEY CATLETT, should be ordered to reimburse



Plaintiff, FLORENCE IONA CATLETT, for one-sixth (1/6) of said taxes being the sum of Six-Hundred Eighty-TWO and 62/100 Dollars (\$682.62).

4. The Court finds that pursuant to the terms of the Judgment rendered in Cause No. 236-39718-76 in the 236th District Court, there is a valid outstanding deed of trust lien against one certain eighty (80) acre tract which is more fully described as follows:

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile West of the town of Aubrey, Texas, containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the DENNIS COWAN Survey:

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey;  
THENCE East 713-1/2 varas, stake for corner;  
THENCE South 633 varas corner;



THENCE West 713-1/2 varas corner, the West Boundary Line of said Cowan Survey;  
THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records, Denton County, Texas.

## SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett;  
BEGINNING at the Northwest corner of the above said tract, said corner being survey station 543 plus 47;  
THENCE South along the West Boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway;  
THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50;  
THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50;  
THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East Boundary line of said tract;  
THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25;  
THENCE North 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00;  
THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the



point of beginning and containing 2.07 acres, more or less, 1.24 acres being within the limits of the present right-of way as shown by right-of way map on file with the State Highway Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

said deed of trust lien is for the benefit of the Federal Land Bank of Houston, Texas. Said deed of trust is recorded in Volume 398, page 483, Deed of Trust Records, Denton County, Texas. The obligation secured by said deed of trust is the sole obligation of Plaintiff, FLORENCE IONA CATLETT. The Court finds that it is in the best interest of all the parties that a partitioning of the real property the subject of this suit that the commissioners previously appointed by this Court should be instructed that to the extent possible they should attempt in the partition of the real property the subject of this partition action to set aside said eighty (80) acre tract for the use and benefit of FLORENCE IONA CATLETT.

5. The Court further finds that in making this partition and in attempting to



the extent possible in making a fair and equitable partition between the parties of setting aside the eighty (80) acre tract for FLORENCE IONA CATLETT, the commissioners are not to take into consideration the fact that said eighty (80) acre tract is subject to the lien held by the Federal Land Bank pursuant to the above referenced deed of trust.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1. Plaintiff, FLORENCE IONA CATLETT, be awarded Judgment in the sum of Six Hundred Eighty-Two and 62/100 Dollars (\$682.62) from M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, said sum to be paid in the due course of administration.

2. The commissioners previously appointed by this Court are instructed that to the extent possible in making a fair and equitable partition of the property they should attempt to set aside the eighty (80) acre



tract of land previously described herein  
for the sole use of FLORENCE IONA CATLETT,  
Plaintiff.

SIGNED this the 14th day of October, 1982.

/s/ JOHN NARSUTIS

Presiding Judge, John Narsutis

CERTIFIED A TRUE COPY, Gladys Whitten,  
District Clerk, Denton County, Texas  
By Vera Hughes, Deputy

(NOTE: The May 18, 1983 OPINION of the  
Second Supreme Judicial District Court of  
Appeals, Fort Worth, Texas, No. 2-82-212-CV  
(No. 81-8158-B below) , shoots down "FLO'S"  
three partition Judgments of Judge Narsutis'  
signed by the Judge on October 4 - 14 - 14,  
1982 , same OPINION reversed and remanded  
the cause. Also saying, "It is further  
ordered that appellee, FLORENCE IONA CATLETT,  
pay all costs of this appeal, for which let  
execution issue . . . " Hence, the alleged  
survey of the "Aubrey, Texas Farm" which  
failed to "honor" the descriptions outlined  
in Judge Narsutis' October 4th, 1982 judgment,  
went down with this O P I N I O N of May 18,  
1983 of the Fort Worth, Texas Appellate Court.  
M. Wiley Catlett, Individually, was not a party  
in "Flo's" partition action and therefore is  
not bound by it- "Wiley" was never served by  
FLORENCE IONA CATLETT .

The bank named in "Flo's" partition  
action , The Federal Land Bank of Houston,  
has not existed since, about 1979 and "Flo's"  
attorney "Lively" prepared that "Interlocutory  
Order" for Judge Narsutis to sign. Said  
partition is not fair and equitable to all  
parties.



NUMBER 77-2726

THE ESTATE OF ERNEST      IN THE COUNTY PROBATE  
LUTHER CATLETT,              NO. 1, TARRANT COUNTY,  
DECEASED                      TEXAS

O R D E R

On the 25th day of January (?), 1982, came on to be heard FLORENCE IONA CATLETT'S motion seeking the removal of M. WILEY CATLETT as administrator of the Estate of ERNEST LUTHER CATLETT and of the appointment of a Successor administrator. FLORENCE IONA CATLETT, movant, appeared in person and by attorney of record and announced ready for trial, and M. WILEY CATLETT, Administrator of the Estate of ERNEST LUTHER CATLETT appeared in person and by attorney of record and announced ready for trial and a jury trial having been waived (?), all matters in controversy were submitted to the court.

The Court, after hearing the evidence and arguments of counsel is of the opinion that



M. WILEY CATLETT has been guilty of mismanagement in the performance of his duties as administrator of the Estate of ERNEST LUTHER CATLETT and necessity for the immediate appointment of a successor administrator exists.

It is therefore ORDERED, ADJUDGED AND DECREED that based upon the findings found set forth hereinabove, that M. WILEY CATLETT be and is hereby removed as administrator of the Estate of ERNEST LUTHER CATLETT, Deceased. It is further ordered that Letter of Administration hereto fore issued to the said M. WILEY CATLETT be immediately returned to the Clerk of this Court and that all letters of Administration be immediately cancelled of record whether delivered or not.

It is further ORDERED, ADJUDGED AND DECREED that Sarraine Krause, a person who is qualified and not disqualified by law be appointed administrator of the Estate of ERNEST LUTHER



CATLETT, Deceased, and that Letters of Administration be issued to Sarraine Krause, upon filing of good and sufficient bond in the sum of \$2,000.00, conditioned as required by law and taking the oath of office and filing same within twenty (20) days from this date.

It is further ordered that M. WILEY CATLETT shall deliver all of the property both real and personal, tangible and intangible, belonging to the Estate of ERNEST LUTHER CATLETT, Deceased to Sarraine Krause successor administrator, at 1245 SouthRidge Ct., Suite 203, Hurst, Tx. at 10:00 A.M. on the 10th day of June, 1983, and on or before the 11th day of July, 1983, that M. WILEY CATLETT make and file a Final Accounting of the Estate of ERNEST LUTHER CATLETT, Deceased in the manner prescribed by law.

Signed this the 10th day of May, 1983.

/s/ Robert M. Burnett  
JUDGE PRESIDING



Approved as to form:

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102  
(817) 338-1616

/s/ A. Bruce Wilson

A. Bruce Wilson  
Attorney for Movant  
State Bar ID# 21666500

WHITTEN & LOVELESS, P. C.  
202 Texas Building  
Denton, Texas 76201  
(817) 383-1618

/s/ William L. Smith, Jr.

William L. Smith, Jr.  
Attorney for Administrator  
State Bar ID# 18760000



COURT OF APPEALS

Second Supreme Judicial District

Forth Worth, Texas, May 18, 1983.

William L. Smith, Jr. 202-216 Texas  
Building, Denton, Tx. 76201 - 267-2881

Dear Sir:

The Judgment of the Trial Court  
in case of M. WILEY CATLETT, Admin. of Estate  
of Ernest Luther Catlett, Deceased v. Florence  
Iona Catlett No. 2-82-212-CV from Denton  
County, was reversed and remanded today.  
Copies of the opinion and judgment of the  
Court are hereto attached.

Yours truly,

Yvonne Palmer, Clerk

JUDGMENT

|                             |                    |
|-----------------------------|--------------------|
| M. WILEY CATLETT, Admin. of | From the 158th     |
| Estate of Ernest Luther     | District Court     |
| Catlett, Deceased           | Denton County      |
|                             | (81-8158-B)        |
| No. 2-82-212-CV vs.         | May 18, 1983       |
| Florence Iona Catlett       | Opinion by Justice |
|                             | Burdock (NFP)      |

This case came on to be heard on the



transcript of the record and the same having been reviewed, it is the opinion of the Court that there was error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court is reversed and the cause remanded.

It is further ordered that appellee, Florence Iona Catlett, pay all costs of this appeal, for which let execution issue, and that this decision be certified below for observance.

-----  
No. 2-82-212-CV

IN THE COURT OF APPEALS FOR THE

SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

M. WILEY CATLETT, Admin. of  
Estate of Ernest Luther Catlett,  
Deceased

APPELLANT

vs.

FLORENCE IONA CATLETT

APPELLEE

FROM THE 158th DISTRICT COURT OF DENTON CO.

-----  
OPINION  
-----

Appeal is taken from an order imposing



sanctions and granting a default judgment in favor of appellee, Florence Iona Catlett.

We reverse and remand.

Originally, appellee, Florence Iona Catlett, R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles sued appellant, M. Wiley Catlett, a resident of Highland Park, Illinois and administrator for the estate of Ernest Luther Catlett, Deceased for partition of real property located in Denton County, Texas. R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles have since been severed from the main cause of action in the trial court and are not involved in this appeal.

Appellant was noticed on July 26, 1982 to appear for depositions on August 20, 1982. In response, appellant filed a motion for protective orders. At a hearing on the motion, on August 19, 1982, appellant, represented by counsel, was ordered to appear August 31, 1982 for an in camera inspection



of documents alleged to be privileged add to make himself available for deposition following the in camera inspection. At the August 31, 1982 hearing , appellant's attorney appeared without appellant and failed to produce the documents previously ordered for the in camera inspection. Appellant also failed to appear for the deposition scheduled that day.

On August 31, 1982, the trial court found appellant violated the previous discovery orders and further ordered that appellant appear for deposition at appellant's attorney's office on September 2, 1982. This order was signed September 1, 1982. Appellant failed to show for the September 2nd deposition. At this time Appellant still resided in the State of Illinois.

On September 3, 1982, appellee filed his first motion for sanctions for appellant's failure to appear and make discovery as ordered by the court.



APPELLANT asserts five points of error. The first point of error alleges that the trial court abused its discretion in granting a default judgment against appellant.

Undoubtedly, the trial court has the authority to strike pleadings pursuant to TEX. R. CIV. P. 167, 170, 215(a)(c); Waguespack v. Halipoto, 633 S.W.2d 628 (Tex.Civ. App.-- Houston (14th Dist.1982), writ ref'd n.r.e.) This authority, even though broad, is subject to abuse of discretion. Fisher v. Continental Illinois National Bank and Trust Company of Chicago 424 S.W.2d 664 (Tex. Civ.App.-- Houston(14th Dist.)1968 writ ref'd n.r.e.). The standard of review is whether the trial court's decision was arbitrary or unreasonable. Landry v. Travelers Insurance Company, 458 S.W.2d 649 (Tex. 1970); Waguespack v. Halipoto, supra.



After reviewing the record and the time frame in which the above events occurred, appellant was essentially precluded from complying with the court order. In the interest of justice, the trial court should have given appellant a reasonable amount of time, after notice, in which to comply with the order. Plodzik v. Owens-Corning Fiberglass Corp. 549 S.W.2d 52 (Tex.Civ.App. -- Austin 1977, no writ).

We find that the trial court was arbitrary and unreasonable in striking appellant's answer and granting a default judgment for failure to comply with the discovery orders and that appellant should have been given a reasonable amount of time in order to make arrangements to appear in the scheduled depositions.

Due to our disposition of this case, appellant's other points of error need not be addressed.



The judgment of the trial court is reversed and the cause is remanded.

WILLIAM E. BURDOCK  
JUSTICE

PANEL B

FENDER, C.J.: BURDOCK AND SPURLOCK II, JJ.  
TEX. R. CIV. P., R. 452

MAY 18, 1983

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(NOTE: Cause No. 81-8158-B, Denton County, Texas is "Flo's" partition action which was filed on December 3, 1981 by her attorney "Lively" and it contains as her Ex. "A" containing the incorrect and insufficient legal description of the land, "Judgment" (Agreed) No. 236-39718-76, Tarrant County, Texas, Petitioner's Ex. "D" and "F" respectively in his complaint, F.R.C.P. Rule 10(c). The facts regarding the insufficient description are shown in:

See PEx. "1" thru "6" of Ex. "J" in Petitioner's Complaint, pages C of A p. 4, 5, 18, 19 thereof. See also p.2, par. 2 of "Lively's" Dec. 16, 1980 letter to R. David Broiles, attorney where "Lively" said: "I have talked to Mr. Trickey (attorney for bank) regarding the discrepancy in acreage, and we are unable to explain it in terms of conveyances." The above appeal resulted from three (3) Judge Narsutis Judgments signed on October 4 - 14 - 14, 1982 which sought to partition the land which all were reversed and remanded on May 18, 1983

Hence, no legal partition of the farm has been made to date. )



WHITTEN & LOVELESS  
Attorneys at Law P. C.  
Suite 202-216 Texas Building  
Denton, Texas 76201

May 24, 1983

Clerk  
Probate Court No. 1  
Tarrant County Courthouse  
Ft. Worth, Texas 76102

RE: No. 77-2826; The Estate of Ernest  
Luther Catlett, Deceased

Dear Clerk:

I represent M. Wiley Catlett, an interested person in the above referenced estate.

Please forward notice of any proceedings had in the above referenced cause to this office.

Your assistance is deeply appreciated.

Sincerely,

/s/ Bill Smith

William L. Smith, Jr.

WLS:tf

cc: M. Wiley Catlett

(Note: These letters from attorney William L. Smith, Jr. are Plaintiff's-Petitioner's Exhibits "G" in his Complaint, F.R.C.P, R,10 (c)



WHITTEN & LOVELESS  
Attorneys at Law P. C.  
Suite 202-216 Texas Building  
Denton, Texas 76201

May 24, 1983

Ms. Sarraine Krause  
1245 Southridge Court,  
Suite 203  
Hurst, Texas 76053

RE: No. 77-2726; The Estate of  
Ernest Luther Catlett,  
Deceased

Dear Ms. Krause:

I represent M. Wiley Catlett, an interested person in the above referenced estate. Please provide this office with notice and an opportunity to be heard regarding all actions taken by you on behalf of said estate.

I am forwarding a copy of this letter to the Clerk of the Probate Court and request that it be made a part of the Court's file.

Sincerely,

/s/ Bill Smith

William L. Smith, Jr.

WLS:tf

cc: M. Wiley Catlett

Clerk, Probate Court



C I V I L D O C K E T

No. 236-39718-76 M. Wiley Catlett, et al  
-213-

vs.

Florence Iona Catlett, et  
al

ATTORNEYS: Brown, Crowley,etal (Nelson)  
Michael R. Burkett

Brown, Herman(Broiles)Ptf.

vs.

ATTORNEYS: Walker, Bishop (John Lively)

FOR: Florence Iona Catlett, et al

For: Federal Land Bank:(Richard Trickey)

Suit to set aside Deed

DATE OF FILING: September 1, 1976

Jury Fee - \$ 5.00

Paid By Plaintiff - December 7, 1979

Date of Orders - \$28.00 ORDERS OF COURT

4-1-77 -- Transferred to 236th District  
Court per order recorded in  
Book PY and Page 561 "Tom Cave"

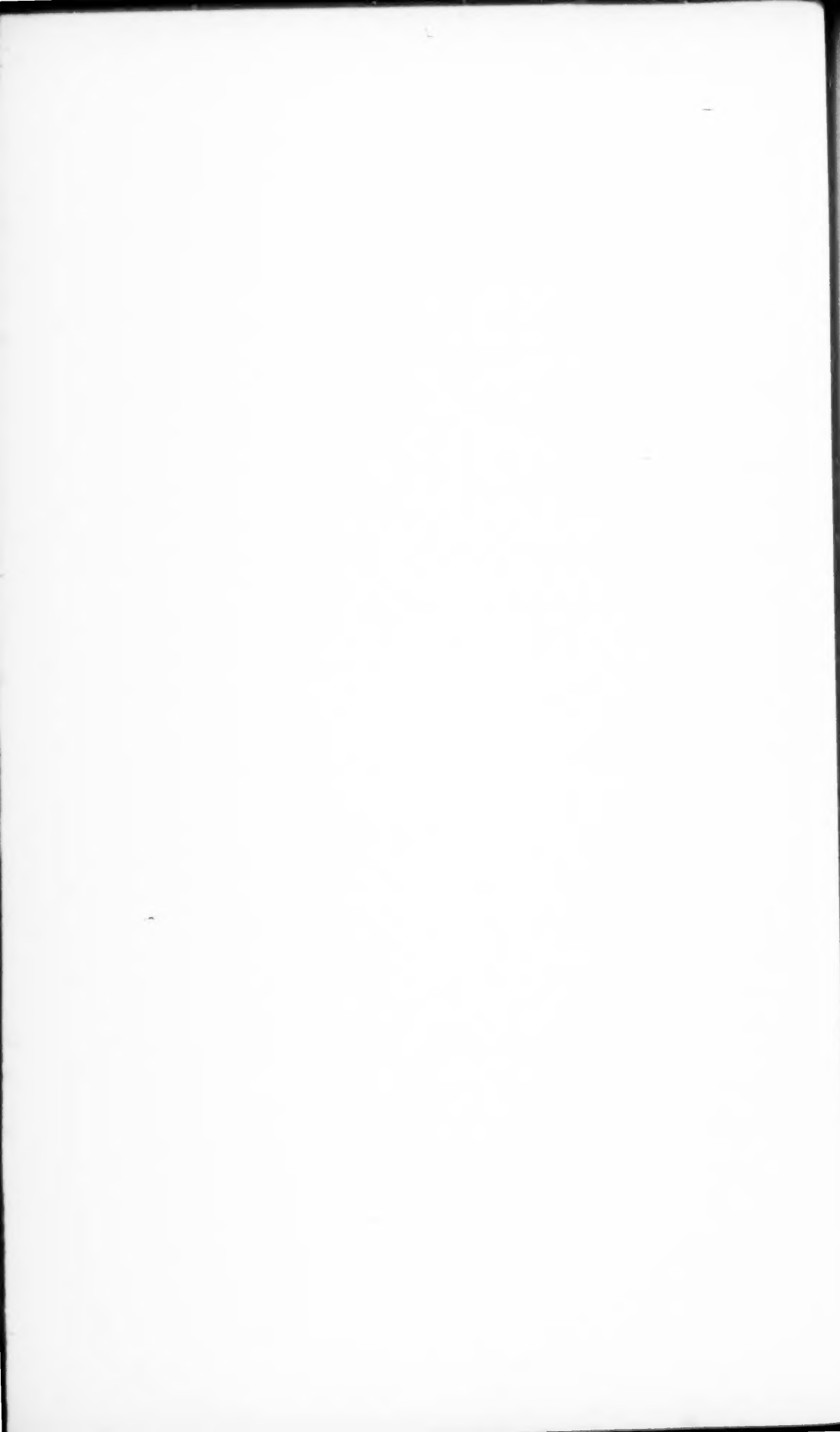
10-28-77 - Suggestion of De - Alw, Jr.

11- 4-77 - Granted Motion for Protection -  
Alw. Jr.



CIVIL DOCKET

- 11-14-77 - Order to quash Depo - Alw Jr.
- 1- 5-78 - Order to produce granted  
- on or before 2-15-78 -Alw Jr.
- 12- 4-79 - Order substituting counsel  
- signed . . ALWJr.
- 11-17-80 - Trial begins - 11-17-80 --  
11-20-80 - (Cont'd)
- 11-20-80 - Case Settled -- 2:30 P.M.-Alw Jr.
- 8-27-81 - Hearing on Motion for Judgment -  
4-28-80 ; 8-25-80 ; 10-14-80 ;  
11-17-80
- 9-15-81 - Judgment signed . . . Alw Jr.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT,                      CIVIL ACTION  
Plaintiff,  
v.    No. S-87-83-CA  
JOHN R. LIVELY, et al,  
Defendants

PLAINTIFF'S EXHIBIT " J "

CITATION OF AUTHORITY IN SUPPORT OF THE POSITION: THAT UNDER CHARLIE CATLETT'S WILL OR UNDER THE LAW OF DESCENT and DISTRIBUTION ERNEST LUTHER CATLETT, sole survivor, will inherit everything: that is the whole, 100%, AUBREY TEXAS FARM of James L. Catlett and wife, Elizabeth A. Further, THAT the "Chain of Title" of said farm and estates vested in ERNEST LUTHER CATLETT

---

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, M. WILEY CATLETT, sole heir of ERNEST LUTHER CATLETT, his father, and Plaintiff herein and files the following:

1. Citation of Authority in support of the position: that under Charlie Catlett's will, Exhibit "A" in this Cause, or under the law of descent and distribution that Ernest Luther Catlett, sole survivor of James L. Catlett and wife, Elizabeth A. Catlett, his



father and mother, inherited the whole, 100%, 6/6th's, of the AUBREY, TEXAS FARM formerly owned by his father and mother.

2. (a) - Charlie Catlett, Testator, died  
August 26, 1974
- (b) - Pharon C. Catlett, died September  
19, 1975
- (c) - Ernest Luther Catlett, died June  
1, 1977

Ernest Luther Catlett was the sole surviving son; Pharon Crawford Catlett having predeceased Ernest Luther Catlett.

3. The SECOND provision of Charlie's will, Plaintiff's Exhibit "A" herein contains just two (2) sentences and likewise two (2) paragraphs. The first sentence is ten (10) lines long and the second sentence is six (6) lines long.

4. The first sentence (ten lines in length) of that SECOND provision reads:

" SECOND: I give and bequeath to my brother, ERNEST LUTHER CATLETT, for and during his natural life all of my property, real,



personal and mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's Lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and as his death all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas. "

5. In FROST NAT. BANK of San Antonio v. NEWTON, Tex.Sup.Ct., 1977, 554 S.W.2d 149 on p. 153 stated: "(2) . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument. "REPUBLIC NATIONAL BANK of DALLAS v. FREDERICKS, Tex. Sup. Ct., 1955, 283 S.W.2d 39, 49, 155 Tex. 79. No speculation or conjecture regarding the intent of the testatrix is permissible



where, as here, the will is unambiguous, and we must construe the will based on the express language used therein. HUFFMAN v. HUFFMAN, 161 Tex. 267, 339 S.W.2d 885 (1960)." .

6. In ADAMS v. MASTERSON, Tex.Civ.App., Dallas, 1967, 415 S.W.2d 535, RNRE, see p. 536 where the court said: "(1-3) . . . The will and codicil are unambiguous . . . it is our view that rules of construction may not be employed by the courts to make a disposition which is not included in the testor's will for "this would amount to ascertaining the testator's intention from what he failed to say rather from what he did say." 61 Tex. Jur.2d. Wills, Sect. 129, p. 251; Arwood v. Kleberg (5th Cir.) , 163 F2d 108, 114, cert. den. 332 US 843, 68 S.Ct. 267, 92 L.Ed. 414; Dailey v. Dailey, 224 Ill.App. 17, cer. den."

7. First, Charlie's will in that first sentence (ten (10) lines in length) of the SECOND



provision made the survival of the remainder-man, Pharon Crawford Catlett, who now lives in the County of Tarrant, Texas, a condition precedent to the vesting of the remainder. Pharon Crawford Catlett must survive the first-taker, Ernest Luther Catlett. A fact which he did not do.

8. The conditional element is incorporated into the description of, or into the gift to the remainder-man. Therefore, Pharon's remainder was contingent. Contingent upon Pharon surviving Ernest.

9. The Supreme Court of Texas in *GUILLIAMS v. KOONSMAN*, 1955, 279 S.W.2d 579, see p. 582 where they said: "The rule for determining whether a remainder is vested or contingent is thus stated by Gray in his work on The Rule Against Perpetutities: "If the conditional element is incorporated into the description of, or into the gift to the remainder-



man, then the remainder is contingent; but if, after words giving a vesting interest, a clause is added divesting it, the remainder is vested." 3rd Ed., sect. 108(3), page 85, see also *In Re: Roe's*, 281 N.Y. 541, 24 N.E. 2d 322, 131 A.L.R. 712, et seq. The rule as thus stated has been approved and adopted by the courts of this state. *Jones v. Hext*, Tex. Civ.App. 67 S.W.2d 441, 444, writ refused; *Rust v. Rust*, Tex.Civ.App. 211 S.W.2d 262, 266, opinion approved, 147 Tex. 181, 214 S.W. 2d 462.

10. In Charlie's will, it is clear that the gift to the remainder-man, Pharon, in that first sentence (ten(10) lines in length) has the conditional element incorporated into that description of, or into the gift itself to the remainder-man, Pharon. Hence, the remainder is contingent. It is all in just one long sentence.

11. As further stated in *GUILLIAMS v. KOONS-*



MAN, 1955, 279 S.W.2d 579, The Texas Supreme Court, page 582 said: " . . . when the will makes survival a condition precedent to vesting of the remainder, it must be held contingent. In 36 Tex.Jur., Remainders and Reversions, section 7, p. 877 . . . "

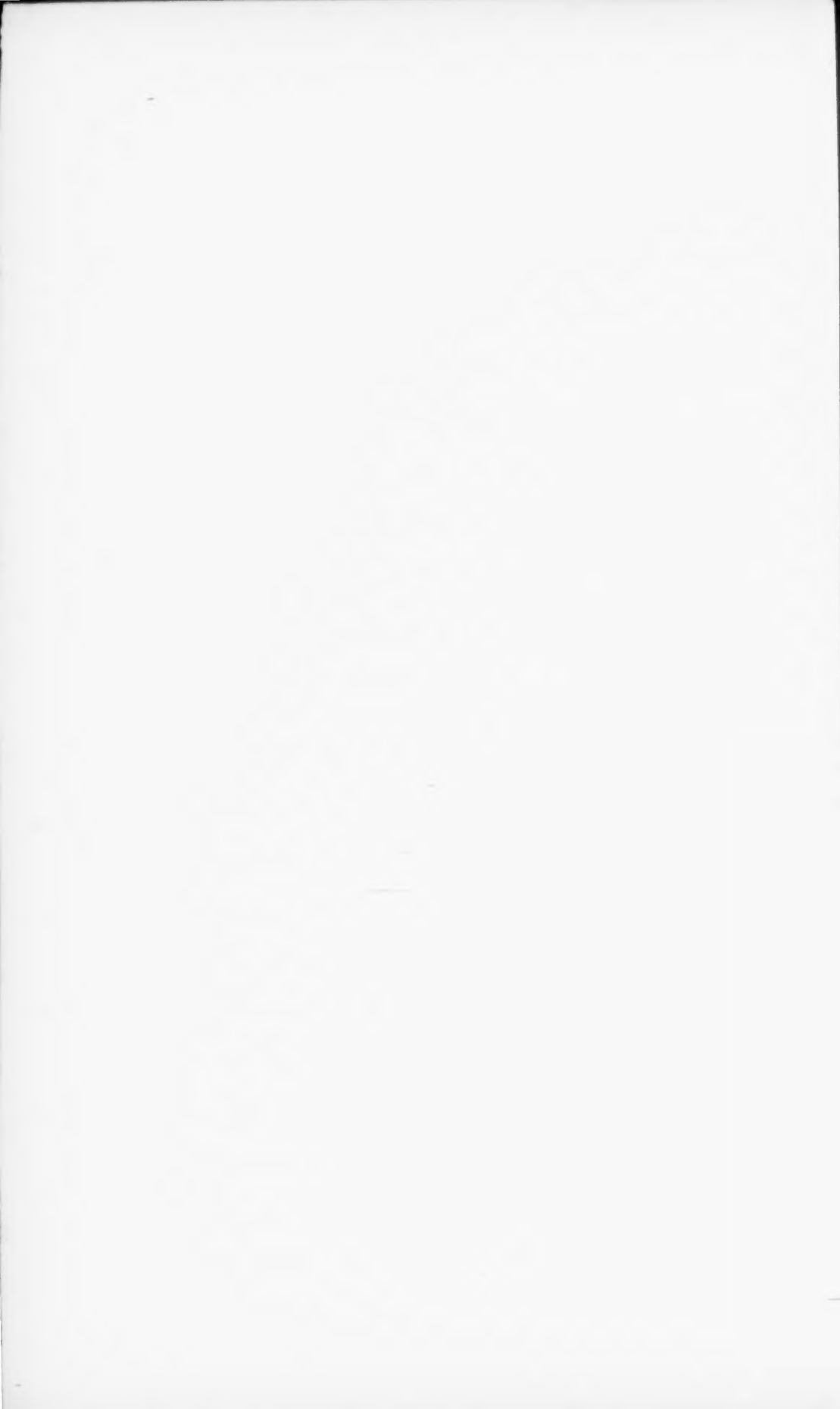
12. The conclusion that the remainder to Pharon is contingent is impelled by those words: " . . . and at his death (Ernest Luther Catlett's death) all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in County of Tarrant, Texas." (Emphasis added). Charlie's will in that first sentence (ten (10) lines in length) of the SECOND provision made survival of the remainder-man (Pharon) a condition precedent to the vesting of the remainder. Pharon predeceased Ernest. Pharon was not alive at the time of his death (Ernest's) the time when all of said lands and other property " shall vest " in Pharon.



13. There is no "but if " in that first sentence (ten (10) lines in length) of the SECOND provision. Also there is no clause added divesting it after words giving a vesting interest as stated in Gray's work on the Rule Against Perpetuities. However, a conditional element is incorporated into the description of, or into the gift to the remainder-man, then the remainder is contingent; . . . " (Emphasis Added)

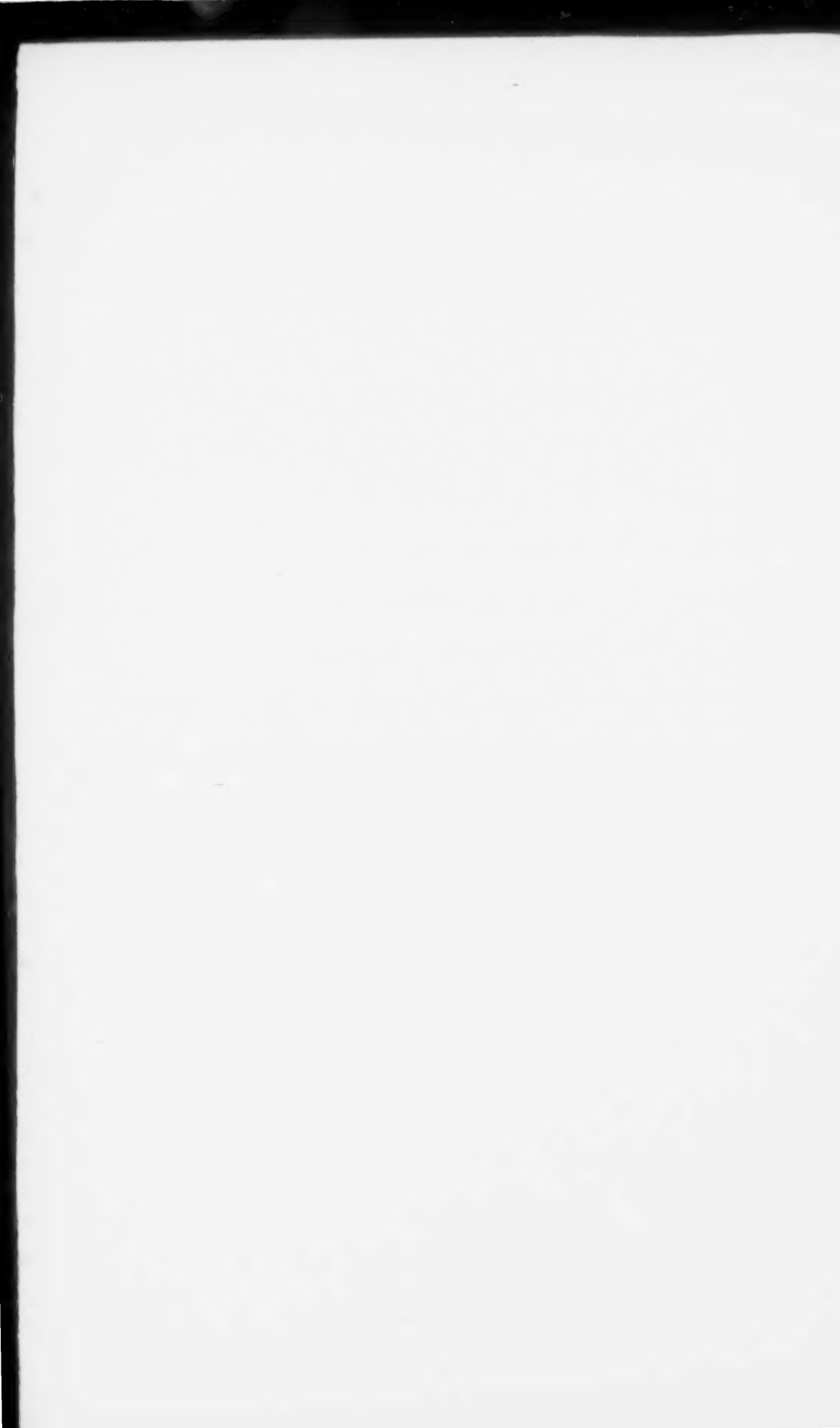
14. Second, consider the second sentence of the SEDOND provision of Charlie's will, Exhibit "A" hereto, which second sentence (six lines in length) reads as follows:

" It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property, of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee



simple by my brother, PHARON CRAWFORD CATLETT. "

15. It is Plaintiff's, herein, position that the language of this second sentence of that SECOND provision quoted is crucial to a determination of the intent of the testator.
16. Plaintiff concedes that the law favors a construction that a remainder is vested rather than contingent. Nevertheless, rules of construction are subordinate to the intent of the testator as gathered from the will as a whole, and "if there by any words in the will that indicate, though slightly, that it was not the intention of the testator to vest the estate, they will be given that effect." COKER v. ECKERT, 369 S.W.2d 473 (Tex.Civ.App. - Fort Worth 1963, writ ref.n.r.e.) (Emphasis added). The rule favoring early vesting of estates does not apply where there are other indicia of intent expressed. WILKES v. WILKES, 488 S.W.2d 398 at p. 401 (Tex. 1972).



17. The language of intent in the will of Charlie Catlett, Exhibit "A" herein, is that Pharon would inherit at the time of Ernest's death that " which shall remain upon his death . . . " This language presupposes that the property devised to Ernest would undergo diminution during the pendency of his estate and implies in Ernest a power to encroach upon, dispose of and consume the property of the estate. MURPHY v. SLATON, (Tex. 1954) 154 Tex.35, 273 S.W.2d 588, pp 595 & 596. Resultingly, Pharon is relegated to the status of a contingent remainder-man whose rights are limited to any property undisposed of at the time of Ernest's death. DICKERSON v. KELLER, 521 S.W.2d 288 (Tex.Civ. App. -Texarkana, writ ref.n.r.e.) see p 292, (2) & (3,5).

18. If time is annexed to the substance of a gift as a condition precedent, then the gift is contingent, and it is the uncertainty of a right to future enjoyment that distinguishes



a vested from a contingent remainder. JONES v. HEXT. 67 S.W.2d 441 (Tex.Civ.App. - Amarillo 1934, writ ref.). In relation to the will of Charlie Catlett, the uncertainty as to future enjoyment lay in the uncertainty as to what would remain in the estate at the termination of Ernest's interest. The express provisions that Pharon's estate would vest at the time of Ernest's death, and that Pharon would inherit "that which shall remain" at the time of Ernest's death, express a clear intent that Pharon receive a contingent remainder, contingent upon Pharon's surviving Ernest and upon what property, if any, remained in the estate at the time of Ernest's death.

19. Charlie Catlett was never married and never had any children. Ernest Luther Catlett was the sole survivor; hence Ernest under the law of descent and distribution would inherit everything. In Re: GATES' ESTATE, Supreme Court said: "His death, which occurred before that of one life tenant, divested his estate."



WALTER L. GEYER, M. D.  
2061 Highway 183 N. W.  
Ft. Worth, Texas 76104

- - - - -  
Telephone 626-8268

July 26, 1976

TO WHOM IT MAY CONCERN:

RE: ERNEST LUTHER CATLETT

This is to certify that I have been treating Mr. Ernest Luther Catlett for the last three years. Mr. Catlett is 87 years old and has been a Nursing Home Patient during this time. Mr. Catlett's health has been poor and he suffers from hardening of the arteries. He has what is known as a chronic brain syndrome. This means that his mind does not function properly, he is mentally incompetent and certainly is in no condition to make judgments or decisions in business matters.

Mr. Catlett cannot remember events from one visit to my office to the next. He has no recollection of previous treatments that I have



given him, particularly those of a surgical nature. Again I would say he could not and should not make a business judgment. He is easily influenced and obeys instructions readily. He would if requested, sign any type of document.

Sincerely yours,

/s/ Walter L. Geyer

Walter L. Geyer, M. D.



F I L E D  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
AUG. 21, 1989  
MURRAY L. HARRIS, CLERK  
Beverly Hudgens, Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT,  
Plaintiff,

CIVIL ACTION

vs.

No. S-87-83-CA

JOHN R. LIVELY,  
et al, Defendants

PLAINTIFF'S MOTION to COMPEL ANSWERS  
from DEFENDANT, FLORENCE IONA CATLETT, et al  
Under Rules: 37(a), 37(d), 33, and 26.

TO THE HONORABLE JUDGE PAUL BROWN:

PLAINTIFF, M. WILEY CATLETT, sole heir  
of Ernest Luther Catlett, moves the Court,  
pursuant to The Federal Rules of Civil Pro-  
cedure, Rules: 37(a) and 37(d) and 33 and  
26, for an order to compel defendant, FLO-  
RENCE IONA CATLETT, Individually, and as  
Independent Executrix of The Estate of P. C.

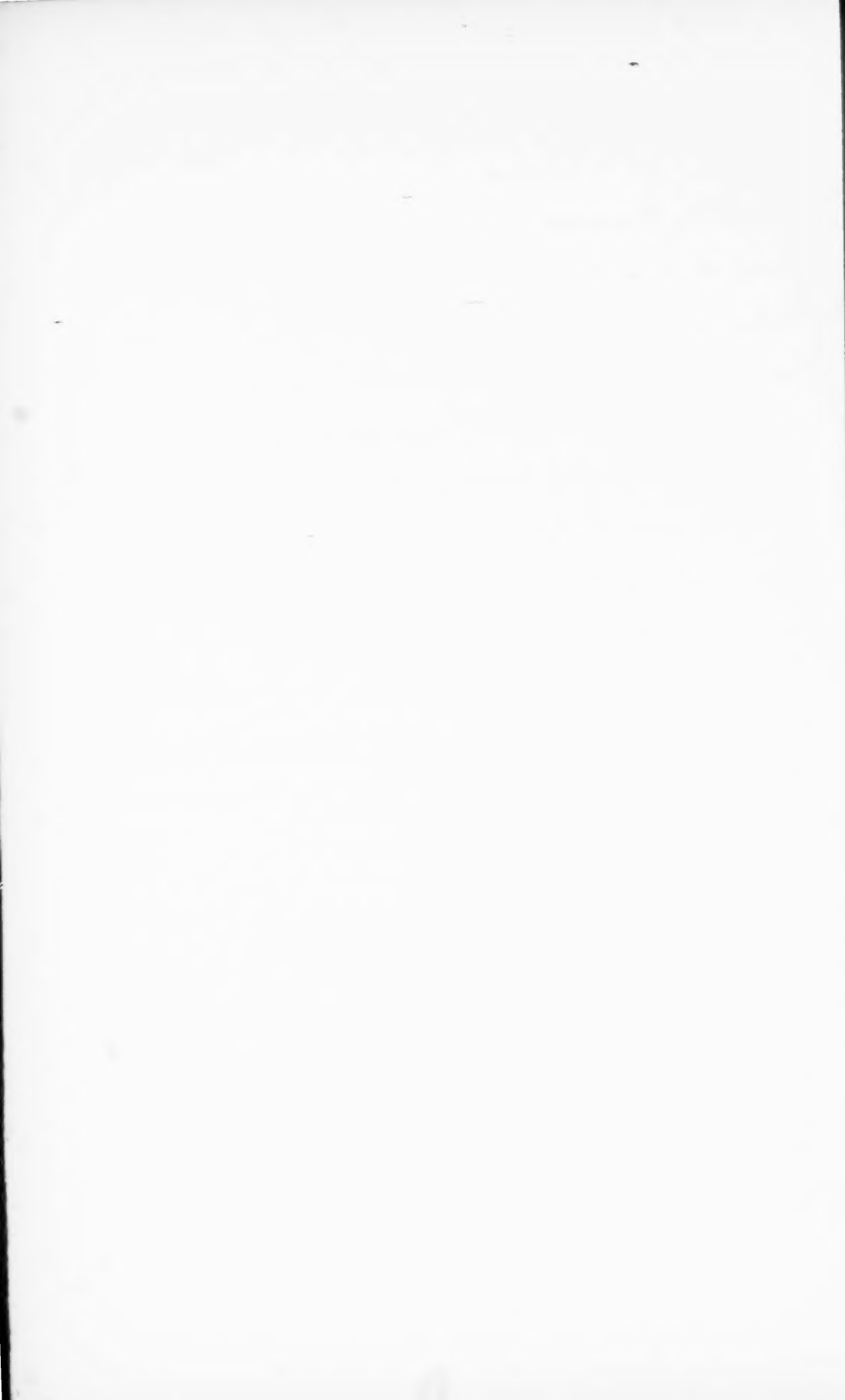


Catlett, Deceased, and as Administrix with with Will Annexed to The Estate of Charlie Catlett, Deceased (hereinafter "FLO") whose last know address is 702 N.W.24th Street, Fort Worth, Tx. 76106, and whose attorney of Record is John R. Lively who is also a defendant herein (hereinafter "LIVELY"), whose last known address is LIVELY & KASSELMAN, 1130 Fort Worth Club Tower, Fort Worth, Tx. 76102, both addresses being in Tarrant County, Texas, to produce answers to Interrogatories, "First Set", and for Sanctions and respectfully shows the Court as follows:

Plaintiff served "First Set"  
of Interrogatories on "FLO"

1. The Plaintiff herein, says that a true and correct copy of the "PLAINTIFF'S "First Set" of INTERROGATORIES to DEFENDANTS" was served upon defendants "FLO" under The federal Rules of Civil Procedure, Rule 33, by enclosing same in an envelope postpaid for first class handling which bore the senders name and return address

Page 1.

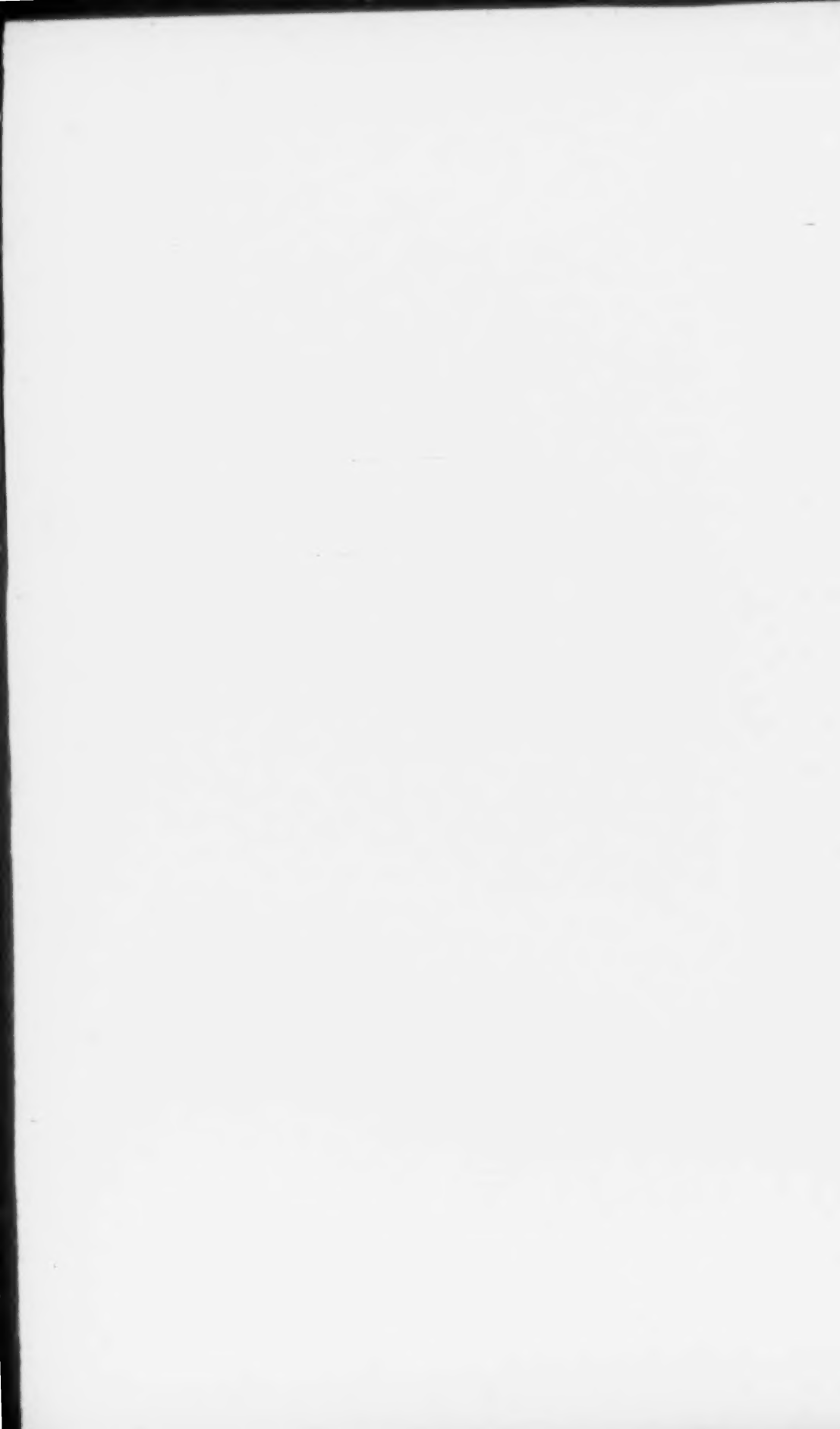


FEDERAL COMPLAINT - No. S-87-83-CA IN THE  
UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF TEXAS, SHERMAN DIVISIONList of ExhibitsExhibit  
NumberName of Exhibits

- "A" Charlie Catlett's Will signed -  
1-24-68 and Codicil signed 9-19-73  
P. 9 Item #26
- "B" Attorney John R. Lively's (2-page)  
Letter of 12-16-80 to attorney R.  
David Broiles  
p. 12, 15 Items #33, 37
- "C" CIVIL DOCKET SHEET (BOTH SIDES)  
No. 236-39718-76, 236th D.C.,  
Tarrant County, Tx. "probative  
evidence"  
p. 14 Item #35
- "D" Florence Iona Catlett's PARTITION  
Petition of 12-3-81 in Denton County,  
Tx., No. 81-8158-B  
p. 14 Item #35
- "E" "Settlement-Agreement", dictated on  
11-20-80 in No. 236-39718-76, Tarrant  
County, Tx.  
p. 12, 15 Items #33, 35
- "F" AGREED or CONSENT JUDGMENT, No. 4,  
signed on 9-15-81, No. 236-39718-76,  
Tarrant County, Tx. 236th D.C.  
p. 17, 16, 15, 14, 13 Items #34, 35, 36,  
38, 39, 40



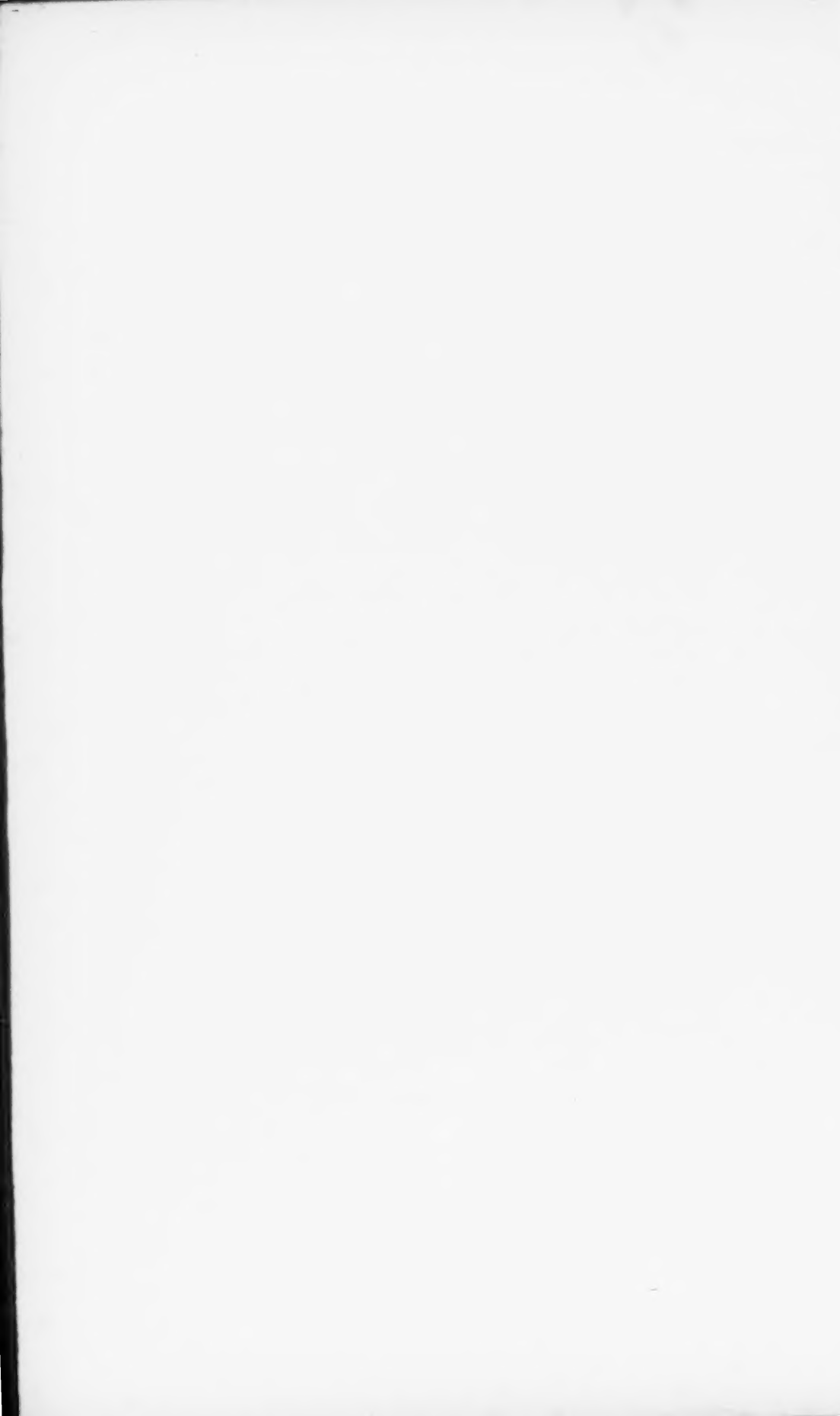
- "G" May 24, 1983 LETTERS from Attorney William L. Smith, Jr. of Denton, Tx. to the CLERK of Probate Court No. 1, Tarrant County, Tx., No. 77-2726 and another to Sarraine S. Krause, Successor Administratrix of the Estate of Ernest Luther Catlett, Dec'd. She is also an attorney.  
p. 24 Item #57
- "H" WARRANTY DEED #57214, vol. 1511, pp 17,18,19 & 20, Deed Records, Denton County, Tx., 10-19-84 from Johnny W. Richards, II as Successor Administrator of The Estate of Ernest Luther Catlett ? ? ? to the AUBREY GROUP composed of: Sharon L. Tolbert, David J. McGilvray and Joseph R. Kilianski (Grantee(s))  
p. 26,29,30 Items #60, 73
- "I" JOHN R. LIVELY (Claimant) 1-25-85  
Authenticated Claim in the amount of \$42,228.00 in Cause No. 77-2726, Tarrant County, Tx. In Re: The Estate of Ernest Luther Catlett, Dec'd.  
p. 27 Item #64
- "J" "Authority of the Chain of Title and Construction of Charlie Catlett's Will "  
p. 32 Item #78



FEDERAL COMPLAINT - NO. S 87-83-CA  
Filed: 4-16-87 IN THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF TEXAS,  
SHERMAN DIVISION:

List of Exhibits in Citation  
of Authority - Exhibit " J "

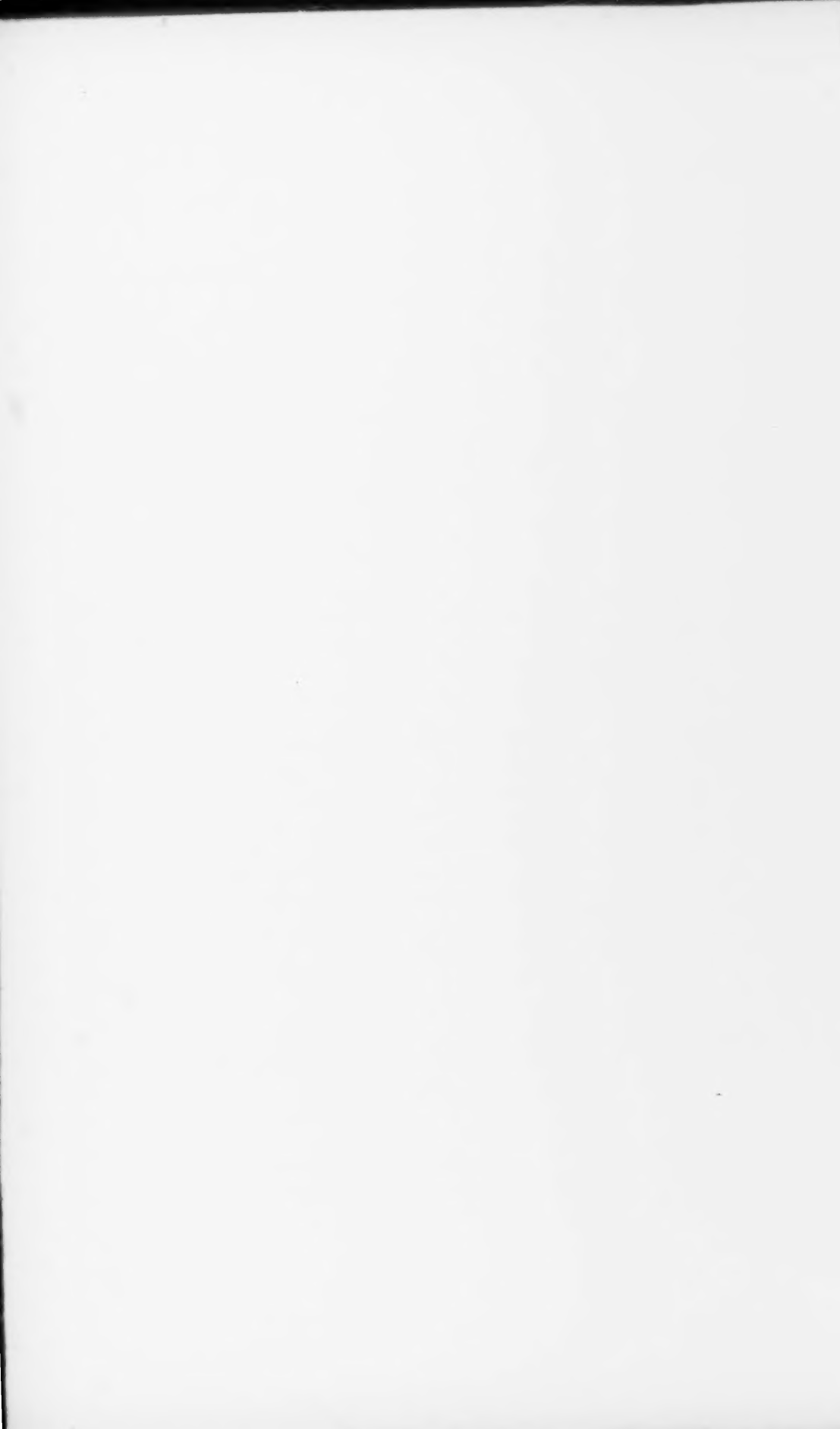
| <u>Exhibit<br/>Number</u> | <u>Name of Exhibits</u>   |
|---------------------------|---|
| "1"                       | FIRST TRACT, 8-3-1893, DEED - J. T.<br>Robinson & wife to J. L. Catlett -<br>@ 80.0 acres<br>p.C of A - p.4            Item #22                         |
| "2"                       | SECOND TRACT, 11-11-1881, ORIGINAL<br>PATENT - O. M. Roberts, Governor of<br>Texas to J. L. Catlett - 14.6 acres<br>p.C of A - p.4            Item #22  |
| "3"                       | THIRD TRACT, 11-27-1884, DEED - T. B.<br>Cagle & wife to J. L. Catlett -<br>@ 54.5 acres<br>p.C of A - p.4            Item #22                          |
| "4"                       | FOURTH TRACT, 11-12-1880, DEED -<br>J. G. Loudder & wife to J. L. Catlett<br>- @ 54.0 acres<br>p.C of A - p.4            Item #22                       |
| "5"                       | FIFTH TRACT, 10-19-1883, DEED - A. E.<br>Looper & wife to James Catlett -<br>@ 50.0 acres<br>p.C of A - p.4            Item #22                         |
| "6"                       | PART of FIFTH TRACT, April 14, 1884,<br>DEED - JAMES L. CATLETT and wife to<br>J. G. Powledge - @ 27 acres or less<br>p.C of A - p.5,19    Items 23, 60 |



- "7" MAY 29, 1929, DEED - S. C. Catlett, "Pharon", to C. E. Catlett, "Charlie", WARRANTY DEED #95390, recorded 6-27-1936  
p.C of A p.6,7 Item #27,31
- "8" September 19, 1973, WARRANTY DEED #19329, C. E. Catlett "Charlie", and Ernest Luther Catlett "Ernest", to Pharon C. Catlett (without consideration)  
p.C of A - p.7,8,9,10 Item #31,32,34
- "9" April 26, 1975, QUIT CLAIM DEED #6521 - Ernest Luther Catlett, "Ernest" to Pharon C. Catlett, "Pharon", (without consideration)  
p. C of A - p.9,10 Item #34
- "10" June 19, 1975, DEED of TRUST #10550, Pharon C. Catlett acting individually and as Independent Executor of the Estate of Charlie Catlett, Dec'd, and wife (alleged), Florence-I. Catlett to Federal Land Bank of Houston (\$30,000 loan by "Pharon" and "Florence" on the FIRST TRACT of the Aubrey, Texas farm, Exhibit "1" herein.  
p.C of A - p.11 Item #35

FEDERAL RULES OF CIVIL PROCEDURE, RULE,  
10(c)

"A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."



NUMBER 77-2726

ESTATE OF ERNEST  
LUTHER CATLETT,  
DECEASED

IN THE PROBATE COURT  
NUMBER ONE OF  
TARRANT COUNTY, TEXAS

ORDER AUTHORIZING PAYMENT OF CLAIM

On this day came on for hearing the  
Authenticated Claim of John R. Lively, and  
after due notice appeared John R. Lively and  
Johnny W. Richards, II, the Successor Admin-  
istrator, and the Court finding that the claim  
is in proper form, and the Court after hear-  
ing the evidence and considering the exhibits  
finds that the claim of John R. Lively is  
proper, that the Administrator has not disal-  
lowed same, and that the Estate of E.L. Cat-  
lett, deceased is indebted to John R. Lively  
in the sum of Forty <sup>one</sup> ~~two~~ Thousand <sup>Six</sup> ~~Two~~ Hundred  
Eighty-Four ~~and NO/100 Dollars (\$42,228.00):~~  
\$41,684.

ORDERED that the claim of John R. Lively  
in the sum of Forty <sup>One</sup> ~~Two~~ Thousand and <sup>Six</sup> ~~Two~~  
Hundred <sup>Eighty-Four</sup> ~~Twenty-Eight~~ and NO/100 Dollars  
\$41,684.  
(~~\$42,228.00~~) against the Estate of E. L.  
Catlett, deceased, is ALLOWED by this Court.



It is further ORDERED that Johnny W.

Richards, II, the Successor Administrator,

pay to John R. Lively from the funds of the

One Six

Estate the sum of Forty-~~Two~~ Thousand ~~Two~~

## Eighty-Four

Hundred ~~Twenty-Eight~~ and NO/100 Dollars

\$41,684.

(~~42,228.00~~).

SIGNED this the 8th day of February,

1985.

/s/ Robert M. Burnett

JUDGE PRESIDING

2 / 20/85

11.00



THE CONSTITUTION OF THE UNITED STATES

## ARTICLE III.

"SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or . . . .  
- to Controversies between Citizens of different States . . . . "

## AMENDMENT V

" . . . . . nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

## AMENDMENT XIV

" SECTION 1. . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."



NUMBER 77-2726

ESTATE OF ERNEST                      IN THE PROBATE COURT  
LUTHER CATLETT,                      NUMBER ONE OF  
DECEASED                      TARRANT COUNTY, TEXAS

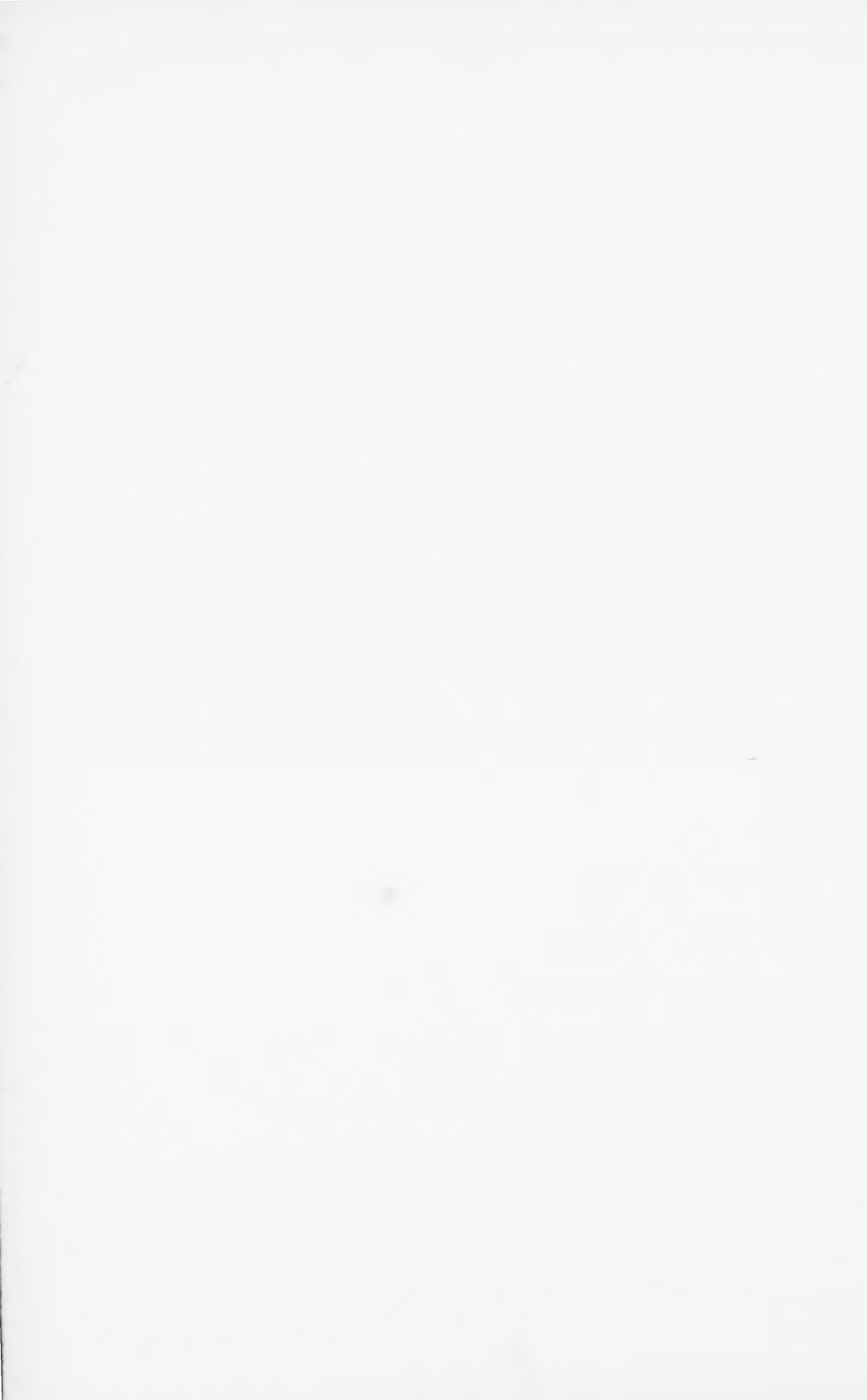
"AUTHENTICATED CLAIM OF JOHN R. LIVELY"

1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of \$42,228.00. This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate. Attached hereto as Exhibit "A" is an itemized statement of dates, services rendered and amount of time incurred. Claimant further states that a reasonable attorney's fee for the services described in Exhibit "A" in Tarrant County, Texas, at the time that they were rendered was \$85.00 per hour.

2. Claimant requests allowance and payment of this claim of \$42,228.00.

/s/ John R. Lively

JOHN R. LIVELY, Claimant  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102



STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY and after being duly sworn by me, stated that the foregoing claim is just and that all legal offsets, payments and credits known to claimant have been allowed.

/s/ John R. Lively  
JOHN R. LIVELY, Claimant

SUBSCRIBED AND SWORN TO BEFORE ME by JOHN R. LIVELY on this the 25th day of January, 1985, to certify which witness my hand and seal of office

/s/ Gay Lemar  
Notary Public in and for  
the State of Texas

My commission expires

8/ 1 / 88

PLAINTIFF'S EXHIBIT " I " in the Complaint

\* Atty sending Johnny Richards a copy  
of claim

(NOTE: Copied page 1 only)